SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 62

CHARLES B. MORRIS, APPELLANT,

vs.

PAUL F. JONES, DIRECTOR OF INSURANCE OF THE STATE OF ILLINOIS

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS

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IN THE SUPREME COURT OF ILLINOIS, MARCH TERM, A. D. 1945

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel. PAUL F. JONES, Director of Insurance of the State of Illinois, (Petitioner) Appellee,

vs.

CHICAGO LLOYDS, (Respondent) Appellee,

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel. PAUL F. JONES, Director of Insurance of the State of Illinois, (Petitioner) Appellee,

vs.

CHICAGO LLOYDS, CHARLES N. ACKERMAN, et al., (Respondents) Appellees,

CHARLES B. MORRIS, (Claimant) Appellant

Appeal from Superior Court of Cook County

Honorable Ulysses S. Schwartz, Judge Presiding.

Abstract of Record—Filed February 20, 1945

PETITION

Petition filed February 9, 1938 under Article XIII of the Illinois Insurance Code by People of the State of Illinois upon relation of Ernest Palmer, Director of Insurance, by Otto Kerner, Attorney General, alleging:

That the respondent, Chicago Lloyds, was organized February 3, 1928, under the statute approved July 11, 1927, [fol. 10] regulating and controlling insurance assumed by partnerships, unincorporated associations, individuals or aggregations of individuals as underwriters known and operating as Lloyds, to tranact the business of fire • • • insurance; and on said date, Associated Underwriters, Inc. was licensed as Attorney-in-Fact for respondent for the transaction of its business by the Department of Trade and

Commerce (now the Department of Insurance) of the State of Illinois, and from the time of its said organization and authorization, respondent has been engaged in Illinois in the transaction of fire • • • insurance business.

In addition to being authorized to transact business in Illinois, respondent has been authorized to and is conducting business in other States and territories. The management of respondent is vested in Associated Underwriters, Inc., a corporation organized and existing under the laws of the State of Illinois, which acts and operates as Attorney-in-Fact for respondent.

Respondent is insolvent. Its total admitted assets aggregate not to exceed $1,507,700.07 and its total liabilities aggregate in excess of $1,203,512.17, leaving a surplus to policyholders of only $304,187.90, whereas Section 99 of the Illinois Insurance Code, under which respondent has been operating since July 1, 1937, required it to keep and maintain in Illinois admitted assets, including the deposits of underwriters required by Section 97 of said Code, exceeding all outstanding claims and other liabilities plus the earned premium (less reinsurance premiums and less the commissions actually paid on policies written prior to the [fol. 11] effective date of said Code) on policies in force, of not less than $500,000.00. Said admitted assets of respondent are made up of the following items (listing same) and the liabilities of respondent are composed of the following items (listing same).

Relator, as Director of Insurance, has found respondent to be insolvent and in such condition that its further transaction of business would be hazardous to its policyholders, its creditors and the public and in such condition that it cannot meet the requirements for organization and authorization as required by law. He has found it has violated its charter and the laws of this State by continuing its operations without having the surplus required by law and has reported the case to the Attorney General with instructions to apply forthwith for an order directing respondent to show cause why an order to liquidate it should not be entered as provided by Article XIII of the Illinois Insurance Code.

Petitioners pray that Chicago Lloyds appear and answer the complaint within a short day to be fixed by the court and show cause why an order should not be entered finding that sufficient cause exists for the liquidation of Chicago

Lloyds, directing relator as Director of Insurance to take possession of its property, business and affairs and to liquidate the same in accordance with the provisions of the Insurance Code; that a certified copy of such order to show cause be served upon Associated Underwriters, Inc. Attorney-in-Fact for Chicago Lloyds and upon the return day an order be entered as prayed and for other and further relief as equity may require and to the Court shall seem meet.

[fol. 12] ENTRY OF APPEARANCE, ETC.

Entry of appearance and consent filed February 9, 1938, by Chicago Lloyds, by Associated Underwriters, Inc., its Attorney-in-Fact. Waives service of an order to show cause why a decree should not be entered finding that sufficient cause exists for the liquidation of Chicago Lloyds; consents and agrees to the immediate entry of a decree finding that sufficient cause exists for such liquidation and directing said Director of Insurance pursuant to the said provisions of the Illinois Insurance Code to take possession of the books, records, property, assets and affairs of said Chicago Lloyds and to liquidate the same under the direction of the court in accordance with the statute.

DECREE

Decree entered February 9, 1938. Recites filing of petition; and it further appearing to the Court that on February 9, 1938, at a meeting of the Board of Directors of Associated Underwriters, Inc., Attorney-in-Fact for Chicago Lloyds, a resolution was adopted consenting to the entry of an order in this cause finding that sufficient cause exists for the liquidation of Chicago Lloyds and consenting to its liquidation by said Director of Insurance, pursuant to the provisions of Article XIII of the Illinois Insurance Code; and a certified copy of said resolution having been exhibited to the court and presented with the petition of the petitioners herein; and respondent having filed herein, through its said Attorney-in-Fact, a written entry of appearance and consent to the immediate entry of a decree in this cause, finding that sufficient cause exists for the liquidation of Chicago Lloyds; and the court having examined the verified petition, the entry of appearance and consent, and the exhibits, finds that it has jurisdiction of the subject mat-
[fol. 13] ter and of the parties and that the equities are in

favor of petitioners. The court makes findings of fact finding each of the facts alleged in the petition.

It is therefore ordered, adjudged and decreed that sufficient cause exists for the liquidation of Chicago Lloyds and that relator, Ernest Palmer, Director of Insurance of Illinois, take immediate possession of the books, records, property, business and affairs of respondent and liquidate same in accordance with the provisions of the Insurance Code.

It is further ordered, adjudged and decreed, that Chicago Lloyds, its underwriters, Associated Underwriters, Inc., its Attorney-in-Fact and all officers, agents, directors and employees of said Chicago Lloyds and said Associated Underwriters, Inc., and all other persons, are hereby restrained and enjoined from in any manner interfering with the possession of said Director of Insurance, his employees, subordinates, agents or representatives, in or to the books, records or property of respondent, or with the liquidation of such business, and from transacting any company business or disposing of respondent's property, assets, books or records until the further order of the court.

It is further ordered, adjudged and decreed that the rights and liabilities of Chicago Lloyds and of its creditors (except those holding contingent claims) and of its policyholders, underwriters and all other persons interested in its assets are fixed as of 12 o'clock noon, Central Standard Time, February 15, 1938; that all creditors and other persons having claims against said Chicago Lloyds are immediately enjoined and restrained from instituting any suit or [fol. 14] proceeding intended for the purpose of obtaining a judgment against Chicago Lloyds, from having any execution issued against it upon any judgment heretofore entered against it, from taking any action which would or might interfere with the liquidation or relator's possession and control or title, right or interest in or to the business or property of Chicago Lloyds, from in any manner interfering with the conduct of said liquidation by relators, and all persons are hereby immediately restrained and enjoined from obtaining or attempting to obtain preferences, judgments, attachments or other like liens, and from making any levy against Chicago Lloyds, or its property, assets, books or records, while the same are in the possession and control of relator and until the further order of the court.

Petition by Director of Insurance for order fixing time and procedure for filing claims.

ORDER

Order entered February 15, 1938 that claims be filed with the Special Deputy of the liquidator and fixing date for filing claims, that notice thereof be given by publication, that liquidator examine into and investigate claims filed and report his recommendation as to whether they shall be allowed in whole or in part or disallowed and that upon the filing of such report and objections thereto, the court shall take such further action as justice may require and to equity shall appertain.

PETITION

Petition filed June 24, 1938 by the People of the State of Illinois upon relation of Ernest Palmer, Director of Insurance of Illinois, and Ernest Palmer as liquidator of Chicago Lloyds, to join (1) the individual underwriters [fol. 15] at Chicago Lloyds, (2) Associated Underwriters, Inc., a corporation, (3) City National Bank and Trust Company of Chicago, Trustee, and (4) "Unknown Owners", as respondents in this cause.

Recites various of the steps taken in the proceeding and that the liquidator took possession of the assets and business of Chicago Lloyds, and the various steps in the organization and operation of Chicago Lloyds and acts of Associated Underwriters, Inc. as attorney in fact for the individual underwriters and the appointment of City National Bank and Trust Company of Chicago, as trustee for the deposit in trust of cash or securities made by the individual underwriters at Chicago Lloyds.

Joins as respondents under the name of "Unknown Owners", other parties (other than those listed in Exhibit "D") having or claiming any interest in said trust deposits.

Alleges deficit in the underwriting account of each underwriter and that the trust deposits of cash or securities, or both, now held by said trustee are assets of Chicago Lloyds to be administered in said cause pursuant to the provisions of the Illinois Insurance Code and the direction and orders of this court.

Attaches to the petition the following exhibits:

Exhibit "A". Power of attorney from individual underwriters to Associated Underwriters, Inc., in effect from April 1, 1937.

Exhibit "B". Like power of attorney in effect prior to April 1, 1937. (Not abstracted here. See Abst. 49.)

Exhibit "C". Agreement dated August 19, 1937, between City National Bank and Trust Company of Chicago [fol. 16] and Associated Underwriters, Inc., superseding earlier agreement and appointing said Bank and Trust Company successor trustee for said deposits in trust made by individual underwriters.

Exhibit "D", being a true and correct schedule of all individual underwriters at Chicago Lloyds who have cash or securities deposited with said trustee or who have any other remaining interests in the business and affairs of Chicago Lloyds.

Affidavit as to unknown persons filed June 24, 1938.

ORDER

Order entered June 24, 1938 joining as respondents in this cause each of the individual underwriters at Chicago Lloyds named in Exhibit "A" attached to the order, "Unknown Owners", Associated Underwriters, Inc., and City National Bank and Trust Company of Chicago, as trustee, ordering that summons issue and requiring each respondent to file answer to said petition or otherwise make appearance therein. Exhibit "A" is identical with Exhibit "D" attached to petition of June 24, 1938 (Rec. 67).

ANSWERS

Answer of Benjamin F. Affleck and of thirty-one other underwriters to petition of June 24, 1938.

Answer of Associated Underwriters, Inc. to petition of June 24, 1938.

Answer of B. F. Andrews and nine other underwriters, to petition filed June 24, 1938.

Answer of Fannie Muir Turnbull and sixty-six other underwriters to petition of June 24, 1938.

[fol. 17] Answer of City National Bank and Trust Company of Chicago, individually and as trustee, to petition filed June 24, 1938 and amendment to said answer.

Affidavit of non-residence.

Order entered November 27, 1940 spreading of record resignation of Ernest Palmer as Director of Insurance and appointment and qualification of C. Hayden Davis as

such Director of Insurance and as liquidator of respondent.

Certificate of mailing.

Certificate of publication as to "Unknown Owners" and non-resident respondents.

Order spreading of record herein and making part of the proceedings the resignation of C. Hayden Davis as Director of Insurance of the State of Illinois and the appointment and qualification of Paul F. Jones as Director of Insurance and as liquidator of respondent.

Order striking the name of Ernest Palmer from the entitling of the cause and inserting in lieu thereof the name of Paul F. Jones, and that said cause proceed under the amended entitling.

Liquidator's Tenth Report

Liquidator's tenth report on claims filed June 10, 1942. Report as to the allowance or disallowance of various claims, and states that included in Schedule "B" attached hereto is Claim No. L-9554 of Charles B. Morris, which is not based upon any insurance policy or insurance risk underwritten by Chicago Lloyds, but arises from a claim of Charles B. Morris for alleged false arrest and malicious prosecution and conversion of certain personal property by [fol. 18] agents and employees of Chicago Lloyds, and is based in part upon a judgment entered by default in the Circuit Court of the City of St. Louis, State of Missouri, on or about April 7, 1941, and subsequent to the entry of the order of liquidation and in violation of the injunction order entered in this cause on February 9, 1938, and subsequent to the claim date set by order of court in these proceedings.

Schedule "B" lists a number of claims including the following: Claim No. L-9554—Name of claimant, Charles B. Morris—Amount claimed, $112,500.00—Amount recommended, None.

Objections

Objections by Charles B. Morris to that portion of the liquidator's tenth report recommending disallowance of the claim of Charles B. Morris, for grounds and reasons for objection and exception states:

That Chicago Lloyds, for many years prior to the appointment of liquidator and during and prior to and subsequent to the year 1932, was a voluntary and unincorporated aggregation of individuals, doing business under

the name "Chicago Lloyds" and engaged in writing insurance in the State of Missouri and elsewhere under the so-called Lloyd's plan of writing insurance; that said individuals by power of attorney appointed Associated Underwriters, Inc. to act for them in all matters pertaining to writing insurance in the name of "Chicago Lloyds", collecting premiums and paying losses thereunder and to obtain consent and authority of the said several States of the United States to engage in said insurance business in such States, and authorized said Associated Underwriters, Inc. to [fol. 19] receive and admit service of process in any suit at law or equity brought upon, or by reason of the issuance of such policy and to cause an appearance to be entered on behalf of the individual members of such "Chicago Lloyds" in any such suit.

* * * * * * *

That thereafter, for the purpose of engaging in insurance business in the State of Missouri, said Associated Underwriters, Inc., as such attorney in fact, in accordance and compliance with the laws of Missouri filed with the Insurance Department of the State of Missouri a certified copy of said power of attorney and was granted a right to so transact said business by the State of Missouri; that, in compliance with the mandatory laws of the State of Missouri, it filed in the office of the Insurance Department of Missouri an appointment designating the Superintendent of Insurance to acknowledge or receive service of process and consenting that service of process upon said Superintendent should be taken and held as valid as if served personally upon Chicago Lloyds and upon each individual composing Chicago Lloyds and to constitute personal service upon Chicago Lloyds and upon each said individual so composing it, as long as it shall have any policies or liabilities outstanding in Missouri, even though such aggregation might have been withdrawn, been excluded from, or ceased doing business in Missouri, all as provided by the Missouri law.

That for a number of years thereafter, and in the years 1932 and 1933, said Chicago Lloyds transacted an insurance business in Missouri, issued a great number of policies of insurance and collected a large number of premiums, acting [fol. 20] under said power of attorney to said Associated Underwriters, Inc., and caused agencies to be established

for the transaction of its said business under said power of attorney in various sections of Missouri; that among the agents so appointed; Chicago Lloyds, by and through Associated Underwriters, Inc., employed and entered into a written contract with the claimant, Charles B. Morris, on February 8, 1929, appointing him as an agent for the writing of insurance in Missouri, with authority to collect premiums due therefrom, and he, for a number of years thereafter, continued to act as its agent and was so acting at the dates hereinafter stated.

That thereafter, in the months of October, November and December, 1932, said Chicago Lloyds and said Associated Underwriters, Inc., attorney in fact for said Chicago Lloyds, caused plaintiff, Charles B. Morris, to be falsely arrested and falsely and maliciously prosecuted on a false charge of embezzlement of premiums collected as its agent; that there was subsequently a trial on said charges and upon the evidence adduced the court found that there was no basis for said charge and directed a verdict in favor of said Charles B. Morris and acquitted him of said charge.

That thereafter, Charles B. Morris instituted a suit in the Circuit Court of the City of St. Louis, Missouri, for said false and malicious prosecution, against Chicago Lloyds and Associated Underwriters, Inc., and their agent, Robert A. Roessel, said Circuit Court of the City of St. Louis being a court of record and having jurisdiction of the subject matter of said suit, obtained personal service upon said Associated Underwriters, Inc., attorney in fact of said [fol. 21] Chicago Lloyds, and upon said Robert A. Roessel, a resident of Missouri, and obtained service upon Chicago Lloyds by serving the Superintendent of Insurance of Missouri in accordance with and as provided for by the laws of the State of Missouri and by said appointment hereinabove referred to, which had been filed with the Insurance Department of Missouri; that thereafter said Chicago Lloyds and Associated Underwriters, Inc., attorney in fact for Chicago Lloyds, filed a petition and removed said cause from the Circuit Court of the City of St. Louis to the District Court of the United States for the Eastern Division of the Eastern District of Missouri;

That thereafter Morris filed in said United States District Court a motion to remand the said cause to the Circuit Court of the City of St. Louis, which was denied; that thereafter said Chicago Lloyds and Associated Under-

writers, Inc. and Associated Underwriters, Inc., attorney in fact for Chicago Lloyds, and Robert A. Roessel filed their several pleas to the jurisdiction, claiming that neither Chicago Lloyds nor Associated Underwriters, Inc. were doing business in Missouri at the times stated in said petition of Charles B. Morris, and also filed special demurrers, all of which were denied and overruled by the court; and thereafter said defendants filed answers denying jurisdiction and also pleading to the merits of the cause.

That thereafter Morris filed in said Federal Court another motion to remand, which was sustained by the court; and on the 7th day of January, 1938, said cause was remanded by order of the Federal Court to the Circuit Court of the City of St. Louis for trial.

[fol. 22] That thereafter, on to-wit, February 9, 1938, Chicago Lloyds was placed in liquidation by order of this court and the liquidator notified Morris of the institution of said liquidation proceedings and directed him to file with liquidator any claim he might have against Chicago Lloyds; that thereafter and within the time specified, Morris filed with liquidator a statement of his said claim, attached thereto a copy of the petition above referred to and reciting the fact that said cause was pending in the Circuit Court of the City of St. Louis and notified liquidator that as soon as the same had been tried and the claim liquidated and reduced to judgment, he would file a supplemental and amended claim.

That thereafter said cause was set for trial before said Circuit Court and a judgment rendered against Chicago Lloyds and Associated Underwriters, Inc., attorney in fact for Chicago Lloyds, for $50,000.00, with interest at 6% from the date of said judgment until paid, the Circuit Court of the City of St. Louis expressly finding that it had jurisdiction of said defendants and of the subject matter; that thereafter, about August 1, 1941, Morris caused to be filed with liquidator an amended and supplemental claim, attaching thereto a certified copy of said judgment and of the said entire judgment roll of the proceedings hereinabove referred to and recited.

That Morris was never notified of any date for the hearing of said claim before said liquidator; that he received notice on June 19, 1942 of the fact that liquidator had filed his tenth report and had reported adversely on the allowance of his claim and the sole and only ground or reason

[fol. 23] for the recommendation of disallowance of said claim, as shown by said report and recommendation of liquidator, is the fact that in and by the order appointing him this court issued an injunction restraining the institution of suits, etc., which said liquidator assumed and reports as binding on the claimant Charles B. Morris, a non-resident of Illinois and a resident of the State of Missouri.

Claimant states and represents that in and by his recommendations for disallowance of said claim, liquidator erred, as follows:

That there has been no hearing upon said claim before said liquidator, and said recommendation of disallowance is entirely *ex parte*.

That said claim and supplemental and amended claim were properly filed.

That, in and by said recommendation of liquidator, he has failed to give said judgment of the Circuit Court of the City of St. Louis, State of Missouri, that full faith and credit to which it is entitled by reason of the provisions of Article IV, Section I of the Constitution of the United States.

That liquidator has given improper and unlawful extra-territorial effect to the injunctive order made by the court and failed to find or state or make known to this court in his recommendations that claimant, a non-resident of Illinois, instituted his suit against Chicago Lloyds in the year 1934, long prior to the appointment of liquidator, that said suit was pending and was being defended by Chicago Lloyds in said Circuit Court after having been removed therefrom to the United States District Court and remanded for trial to said Circuit Court by said District Court and after service of process as hereinabove stated.

[fol. 24] That said claim having been merged into a judgment against Chicago Lloyds by the Circuit Court of the City of St. Louis, State of Missouri, which had jurisdiction of the subject matter of said suit and of the person of defendant, Chicago Lloyds, and of which a copy, properly certified under the Acts of Congress, was duly and properly filed with liquidator as claimant's amended and supplemental claim, should have been recommended for allowance instead of disallowance.

Prays the court to order and direct upon a final hearing that said claim be allowed; that this court grant to claimant

the protection of the provisions of the Constitution of the United States and that full faith and credit be given to said judgment of the Circuit Court, and likewise that claimant, as a citizen of the State of Missouri, be granted the privileges and immunities of the citizens of the State of Illinois, as guaranteed by Article IV, Section 2 of the Constitution of the United States and that this court likewise shall not enforce any law of the State of Illinois which shall abridge the privileges of the claimant as a citizen of Missouri and of the United States or deny to him, as such citizen of Missouri, the equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution by Section I thereof, and further that he shall have the benefit and protection of the Sixth Amendment to the Constitution of the United States, to the end that his claim may be adjudicated according to the provisions of the Constitution of the United States and the laws of the United States made under and pursuant thereof.

ORDER OF REFERENCE

Order that claim No. L-9554 of Charles B. Morris, the recommendations of liquidator with respect thereto con-
[fol. 25] tained in his tenth report on claims and the objections of claimant filed thereto, be referred to L. A. Wescott, Esq., Master in Chancery of this court for hearing and that said Master after hearing and considering said claim, recommendation and objections, report to this court (the Superior Court) concerning his findings with respect thereto.

ORDER RE OBJECTIONS

Order granting leave to said Master to file instanter his report dated May 20, 1944 on said claim of Charles B. Morris and ordering that the objections filed by Morris and the objections filed by certain underwriters to said Master's report and recommendations therein with respect to said claim stand as exceptions to said report and recommendations contained therein and setting the matter for hearing.

AMENDED REPORT

Report (Amended) of Master in Chancery, Llewellyn A. Wescott, filed June 16, 1944, as follows:

That he took testimony of witnesses produced and the same, together with certain documents thereupon offered

and received in evidence upon behalf of the parties is returned as part of his report; that objections were filed to his report which were argued before him and are herewith returned, together with his ruling thereon and the exhibits in said cause filed in separate folder, each identified as such by mark of identification, and the entire folder identified by the word "Exhibits". He reports in accordance with his rulings upon said objections, as follows:

"The Facts as Summarized by the Master From Evidence Submitted, Both Oral and Documentary."

[fol. 26] 1. That Chicago Lloyds, an unincorporated association, was on February 3, 1928, and prior thereto, under and by virtue of the laws of Illinois, organized and authorized to transact insurance business under the Lloyds plan in Illinois and in other States upon compliance with the laws of such other States, and that the underwriters of Chicago Lloyds as at December 31, 1932, were the persons listed on Claimant's Exhibit 15, and as at December 31, 1936, were the persons listed on Claimant's Exhibit 16.

2. That on said February 3, 1928, Associated Underwriters, Inc., was licensed as attorney in fact for said Chicago Lloyds for the transaction of its business by the Department of Trade and Commerce (now the Department of Insurance) of the State of Illinois (Claimant's Exhibit 1), and that at all times after the organization of Chicago Lloyds and until February 9, 1938, Associated Underwriters, Inc. acted as attorney in fact for Chicago Lloyds.

3. That from the date of its said organization and authorization said Chicago Lloyds has been engaged in Illinois in the transaction of insurance business.

4. That on February 29, 1932 it filed an application with the Insurance Department of the State of Missouri for a license or certificate of authority authorizing and empowering it to tranact insurance business in Missouri and that said Superintendent issued a certificate of authority dated March 1, 1932, certifying that it was authorized to do an insurance business in Missouri until March 1, 1933, and that on similar application said Superintendent issued a similar certificate dated March 1, 1934 effective until March 1, 1935.

[fol. 27] 5. That claimant's Exhibit one (1) is a copy of the power of attorney in use prior to 1937 and was the form of power of attorney executed by each individual underwriter of Chicago Lloyds in appointing Associated Underwriters, Inc., its attorney for the transaction of its insurance business, and that a copy of said power of attorney was filed with the Superintendent of Insurance of the State of Missouri.

6. That on to-wit, August 24, 1934, Morris brought suit in the Circuit Court of the City of St. Louis against Chicago Lloyds, Associated Underwriters, Inc., as attorney in fact for said Lloyds, and also as an individual defendant, and also against Robert S. Roessell, for the malicious prosecution and false arrest of Morris on a charge of embezzling the funds of Chicago Lloyds while acting as its agent (Claimant's Exhibit 2).

7. That writs of summons were issued for service on defendants; that one was served on August 25, 1934 on Chicago Lloyds by delivering a copy thereof and of the petition to the Superintendent of Insurance and the summons and petition so delivered were transmitted to Chicago Lloyds on August 25, 1934; that summons was served on Associated Underwriters, Inc., individually and as attorney in fact and also upon said Roessell; and that said writs were duly returned with the return of service made thereon.

8. That thereafter Chicago Lloyds filed its petition for removal and said cause was removed to the District Court of the United States in the Eastern District of Missouri, Eastern Division.

9. That thereafter Morris moved to remand said cause to said Circuit Court and the motion was denied.

[fol. 28] 10. That thereafter said Associated Underwriters, Inc. and said Chicago Lloyds by plea and demurrer questioned the jurisdiction of the court over said defendants and said plea and demurrer were overruled; that thereafter said Chicago Lloyds and said Associated Underwriters, Inc., attorney in fact for it, each filed a separate answer on the merits.

11. That thereafter Morris filed in said Federal Court a motion for reconsideration of his motion to remand and

on January 7, 1938 said cause was duly remanded to said Circuit Court of the City of St. Louis.

12. That on to-wit, February 9, 1938, the People of the State of Illinois on relation of the Director of Insurance filed their petition in the Superior Court of Cook County praying for the entry of an order finding that sufficient cause existed for the liquidation of said Chicago Lloyds, which is the proceeding now before the court).

13. That thereafter on February 9, 1938, a decree was entered herein directing the Insurance Director to take immediate possession of the books, etc. of Chicago Lloyds and liquidate the same in accordance with the provisions of the Insurance Code of Illinois.

14. That the decree herein contains an injunctive order which restrains all persons from in any manner interfering with the possession of the said Director in or to the books, records or property of Chicago Lloyds or with the liquidation of its business until the further order of the court; that it ordered that the rights and liabilities of Chicago Lloyds and its policyholders, underwriters, creditors (ex-
[fol. 29] cept those holding contingent claims), and of all other persons be fixed as of 12:00 o'clock noon February 15, 1938 and that all creditors and other persons having claims against said Chicago Lloyds be and they are hereby immediately enjoined and restrained from instituting any suit or proceedings intended for the purpose of obtaining a judgment against Chicago Lloyds, and from having any execution issued against said Chicago Lloyds upon any judgment heretofore entered against said Chicago Lloyds, and said creditors and claimants and all other persons are hereby immediately restrained and enjoined from taking any action which would or might interfere with the liquidation of said Chicago Lloyds or with the relator's possession and control or title, right or interest in or to the business or property of the said Chicago Lloyds, and from in any manner interfering with the conduct of said liquidation by relator, and all persons are hereby immediately restrained and enjoined from obtaining or attempting to obtain preferences, judgments and attachments or other like liens, and from making any levy against Chicago Lloyds, or its property, assets, books or records, while the same are in the possession and control of relator and until the further order of the court.

15. That thereafter said Director of Insurance gave notice to all creditors of Chicago Lloyds to present their claims and Morris received such notice (Liquidator's Exhibit 1).

16. That thereafter, and within the time fixed, claimant filed with said Director a statement of his claim, consisting of two items, one for $12,500.00 for the conversion of per- [fol. 30] sonal property and the other for damages in the sum of $100,000.00 against Chicago Lloyds for malicious prosecution and false arrest, attaching thereto a copy of the petition filed in the Circuit Court of the City of St. Louis and stating that when said claim had been reduced to judgment in said Circuit Court he would file an amended or supplemental claim on the item for malicious prosecution and false arrest.

17. That thereafter when said suit was called for trial in said Circuit Court, the attorneys for Associated Underwriters, Inc., individually and as attorney in fact for Chicago Lloyds, and Chicago Lloyds, withdrew as counsel and exhibited to said Circuit Court a letter written to them by the attorneys for the liquidator herein directing such withdrawal; that thereafter on March 17, 1941, a jury was waived in said case, Robert A. Roessell, the only defendant appearing, was dismissed at the conclusion of the evidence and said cause being then submitted to said court on the pleadings and evidence was taken under advisement by it.

18. That on March 22, 1941, said Court caused a letter to be written to the representative of said Director of Insurance as liquidator which notified the liquidator of the facts set forth in Finding 17 and asks an immediate reply; that a reply was sent by the attorneys of the liquidator that counsel had withdrawn in said Morris suit at the request of the liquidator and that in his opinion any judgment that might be entered therein would violate the injunctive order of the Superior Court of Cook County entered as hereinbefore set forth on February 9, 1938.

19. That the Circuit Court of the City of St. Louis was, [fol. 31] and is, a court of record in and for said State, and that on April 7, 1941, a judgment was entered in said court in favor of said Charles B. Morriss, plaintiff, and against Chicago Lloyds, an unincorporated association, Associated

Underwriters, Inc., a corporation, and Associated Underwriters, Inc., a corporation, attorney in fact for Chicago Lloyds, a voluntary association, in the amount of $50,000.00 damages, $35,000.00 actual and $15,000.00 punitive; that said judgment is final and has never been appealed from.

20. That on August 2, 1941 said Morris filed with the liquidator herein an amended claim (Claimant's Exhibit 2) and filed therewith an exemplified transcript of the records and proceedings held in the said Circuit Court of the City of St. Louis.

21. Finding with reference to liquidator's tenth report on claims; that claimant filed his objections and exceptions to the recommendation for disallowance of his claim and that the matter was then referred to the Master "for hearing and recommendation."

22. That it should be noted that said Morris has now abandoned his original claim for $12,500.00 for conversion of property, and leaves only his claim originally made for $100,000.00, reduced by said judgment to the sum of $50,000.00 and interest.

That further, it should be noted that the claimant herein relies entirely for proof of his claim upon his Exhibit 2, which is a transcript of the Morris judgment in the Circuit Court of the City of St. Louis, and that he has made no attempt to prove his claim by any other means.

[fol. 32] "Findings of the Master Derived From a Consideration of the Evidence Herein as Summarized by the Master in His Foregoing Statement of the Facts."

1. That the Superior Court has jurisdiction of the parties and subject matter of the litigation referred to the Master.

2. That Morris has failed to present evidence or testimony of sufficient weight to cause the Master to recommend that the liquidator's report on claims be changed to allow the claim of Morris, as he finds that the recommendation of liquidator is sustained in fact and the objections thereto of Morris are not sustained in fact.

3. That counsel for claimant and the Director of Insurance have both gone to great work and pains aiding the Master in the hearings and have prepared voluminous

briefs and statements of facts to aid him in arriving at his conclusions.

4. That the equities of the case are with Paul F. Jones, Director of Insurance.

"Conclusions of Law."

That there is no dispute on any material fact in the matter involved in this reference and the only question involved is a question of law stated thus: "Had the liquidator of an insurance company, organized and doing business under the laws of Illinois, or the court appointing him, the right to pass upon the merits or the amount of a claim, arising out of a suit instituted in another forum before the appointment of the liquidator and consummated by a judgment of such foreign court after such appointment: The claimant here in effect admits that a court other than [fol. 33] the one appointing such a liquidator cannot by the rendition of a judgment in a suit pending before such appointment reach property of the estate in the hands of the liquidator. It is contended however that the subsequent entry of a judgment on such a claim establishes and liquidates the claim as a valid indebtedness of the company being liquidated and that such judgment is conclusive on the receiver and the court appointing him."

That there is some authority supporting such a contention. On the other hand there is authority which forbids such a contention.

Most of the cases supporting the contention are found to be federal cases and affected by the Federal Statutes allowing suit in State Courts against Federal receivers without leave of the Court appointing the receivers (See U. S. C. F'otle 28 Sec. 125). Typical of such cases is *Riehle* v. *Margolies*, 279 U. S. 218.

The opposing argument is that if such a judgment is held to be conclusive, the doors will be open to fraud; that great possibility to establish false or exorbitant claims against receivership defendants, will exist, and that the equitable and just administration of the estate in the hands of the receivership court will be prevented. It is undoubtedly true that the property of a company in receivership is held in trust for the benefit of all of its creditors. Consequently to allow a single creditor to recover in a litigation in another State a judgment which would have conclusive effect in the distribution of the common funds is now

consistent with due process for the remaining creditors. [fol. 34] In Illinois, Connecticut and Massachusetts, it is held that a judgment rendered against a receivership defendant by the Court of a foreign State, after the appointment of the Receiver is not conclusive unless the receiver defended therein by authority of the receivership Court. See *Evans* v. *Illinois Surety Co.*, 319 Ill. 105. *Attorney Gen.* v. *Sup. Council A. L. H.*, 198 Mass. 151 and *Husbands'* v. *Aetna Indemnity Co.*, 93 Conn. 194.

"Recommendations."

Finds as a conclusion of law that the judgment obtained by Morris in said Circuit Court is not conclusive upon the Director of Insurance of Illinois, the liquidator, or the court herein.

Recommends that the recommendation of liquidator that the claim be disallowed should be sustained and that claimant's objection to said recommendation be overruled and denied, unless claimant desires to establish his claim by other evidence under the direction of this court in this proceeding.

Master's certificate of services, fees and charges.

Fees fixed by Statute. He reports that he has taken and reported 2643 folios of testimony at the statutory rate of 15 cents per folio, amounting to $396.45.

"Fees to be Fixed by Court

To reading pleadings and testimony, examining briefs and authorities, hearing arguments, preparing findings of fact and of law and drawing report thereon, serving notice to file objections and hearing and passing upon objections so filed, $500.00"

Transcript of Proceedings and Evidence

Transcript of proceedings had and evidence taken before the Master in Chancery, as follows:

[fol. 35] Statement made by attorney for liquidator: That the original claim of Charles B. Morris, No. L-9554, was filed with the liquidator on September 21, 1938; that there are two statements of claim, one in the amount of $100,000.00, alleging the pendency of the suit for actual and punitive damages for false arrest and malicious prosecution pending in the Circuit Court of the City of

St. Louis and the second for an alleged conversion of property of the claimant in the amount of $12,500.00; that said claim was subsequently amended by a letter dated August 1, 1941, and received by liquidator on August 2, 1941, in which the claim originally filed is amended by a transcript of proceedings and judgment in the St. Louis court and that the matter comes on to be heard before the Master upon the claims and the Liquidator's report and the objections filed to his report.

Mr. Tannenbaum: I think the Master ought to know what the objection to the claim was as set up in the report.

The Master: Well, the first thing perhaps should be, was there any specific basis for the rejection of the claim on the part of the Liquidator.

Mr. London: That is set out in the last part.

Mr. Tannenbaum: I will read from the abstract. It is a copy of that section there. You don't have to take this down.

(Reading).

Mr. Tannenbaum: That is your issue, I guess, isn't it?

Mr. Barnes: Well, we are not limited solely to that paragraph in the claim report.

Mr. Tannenbaum: I should think so. I should think that is your pleading.

[fol. 36] Mr. Barnes: Oh, no. The claim itself——

Mr. Real: You are proving up the case *de novo* here. Any objection to the claim is certainly available to us.

Mr. Tannenbaum: I don't think so.

Mr. Barnes: The report of the claim does not purport to show any or all the objections that the Liquidator may have or the basis for his recommendation either for allowance or disallowance as to any of the claims contained in this report. This tenth claim report includes approximately two thousand claims and it does not in any manner, shape or form purport to give any reasons why the Liquidator, or any basis for the Liquidator's recommendation either for allowance or disallowance as to the respective claims reported on.

Mr. Tannenbaum: Well, all the other claims in that report were allowed except the one, which was disallowed by agreement, and this is the only one to which you have filed objections, so there would not be any necessity of raising any issue on the other claims, but it seems to me to be——

Mr. Barnes: It is not a question of raising issue on them. We were not attempting in any manner to do that. That never has been the purpose of the Liquidator's report in the proceedings or any similar liquidation proceeding. This is the tenth claim report. We have filed nine before, and in none of those reports have we specified in the report any reason or basis for the Liquidator's recommendation either for allowance or disallowance. The report contains only a statement of the claim number, the name of the claimant, the amount of the claim, and the amount recommended for allowance or the recommendation of disallowance.

[fol. 37] Mr. Tannenbaum: The fact of the matter is, you do state the reason——

Mr. Real: We are not required to. We certainly are not bound to.

Mr. Barnes: The only reason that was put in there was just to have a brief statement as to the nature of the claim.

Mr. Tannenbaum: I would suggest that you state your grounds completely then.

Mr. Barnes: I don't think so.

Mr. Arnold: You have the burden of proof here.

Mr. Tannenbaum: It is no question on the burden of proof. It is a question on the issues.

Mr. Barnes: The issue comes up on the claim report and the objections.

Mr. Tannenbaum: I think you set up the reasons right in your report.

Mr. Arnold: I don't think that either the underwriters or liquidator are bound by any reasons cited in the report any more than if the report had said, "We recommend the claim for disallowance."

Mr. Barnes: That is all the report amounts to. The underwriters, who are interested parties in this proceeding as much as anybody else——

Mr. Tannenbaum: They have filed no objections to the claim.

Mr. Arnold: Don't have to file any objections to the recommendation of disallowance. We agree with it.

Mr. Tannenbaum: Well, I think the proceedings are covered by the Civil Practice Act and where you make an issue, I think that is binding. Where no objections are filed—there are no objections filed by the underwriters here.

[fol. 38] Mr. Arnold: Why would the underwriters file an objection to the recommendation of disallowance?

Mr. Tannenbaum: They would have to file an objection to the claim.

Mr. Barnes: No.

Mr. Real: That is the duty of the liquidator.

Mr. Barnes: No parties in the proceedings have a duty or right under the statute to file any objections to the claim. The only rights they have is to file or make objections to the recommendation of the liquidator if, as and when he makes a report with respect to the claims filed with him, if they have objections to the recommendation that he makes in his report.

The Master: I think the burden is on the claimant to establish his claim.

Mr. Tannenbaum: We may have the burden but there should be issues definitely outlined here.

Mr. Barnes: That is solely your claim, Mr. Tannenbaum.

Mr. Tannenbaum: That does not make an issue. That is undenied.

Mr. Arnold: The liquidator's conclusion may be absolutely correct, and his reasons that he gives for it might not be well founded. As they say, lots of times on decisions handed down, that the conclusion was right but the reason was wrong, but still the conclusion is good.

Stipulation between parties that Chicago Lloyds was an aggregation of individuals that were organized to do an insurance business under the laws of Illinois under the Lloyds plan; that the Associated Underwriters, Inc. was a [fol. 39] corporation organized under the laws of Illinois and was the attorney in fact for Chicago Lloyds appointed by powers of attorney executed by each individual underwriter.

That each individual who became a member of Chicago Lloyds executed the same form of power of attorney to the Associated Underwriters, Inc. up to 1937, when the form was changed.

Form of said power of attorney offered in evidence as claimant's Exhibit 1.

Stipulation of counsel that Chicago Lloyds, through its attorney in fact, Associated Underwriters, Inc., duly made application in accordance with the laws of the State of Missouri to transact automobile liability insurance business in Missouri prior to 1932.

Judgment roll which was attached as the amended claim offered in evidence and marked Claimant's Exhibit 2.

Mr. Real: The liquidator does object to this offer, your Honor, as to Claimant's Exhibit 2, for the reason that this judgment was taken in contempt of an injunction order entered by the court in which these proceedings were pending, the judgment having been taken some three years after the liquidation proceedings and finding of insolvency and injunction order had been entered; that notice of the insolvency proceedings and the order of injunction had been given to the claimant and his counsel, and at the time the judgment was taken they were aware of the fact that they were proceeding in violation of that injunction order.

We object to it for the reason that it is our contention under the statute it is a judgment taken by fraud and collu-[fol. 40] sion, and therefore not admissible in these proceedings, as fraud and collusion are defined in Section 209 of the Illinois Insurance Code of 1937.

The judgment is further objected to for the reason that the claim or claims upon which the judgment is based are in their nature contingent, contingent as to liability and unliquidated as to amount, and therefore those claims fall within subsection 3 of paragraph 209 of the Insurance Code of 1937, which provides for the filing and the allowance of such claims, for the reason that the claims did not become absolute and liquidated under the provision of the statute on or before the last day fixed for the filing of proofs of claim against the assets of said company.

Liquidator further objects for the reason that a judgment taken either in the courts of Illinois or the courts of any other state after the injunction order had been issued by the court in which these proceedings were pending is not a valid judgment against the liquidator and the assets in his hands, although it may be valid as against the corporate entity itself, and is therefore not admissible in these proceedings, to establish the claim.

Claimant's Exhibit 1 admitted in evidence.

The Master: Suppose I withhold my ruling on this until you submit authorities?

Claimant's Exhibit 3, copy of power of attorney, admitted in evidence.

Claimant's Exhibits 4, 5, 6, 7, 8, 9, 10 and 11 admitted in evidence.

Stipulation that Claimant's Exhibit 1 was filed with the Superintendent of Insurance in Missouri and was form in [fol. 41] use prior to 1937 and in force and effect at the time of the acts complained of in this action.

Admission by counsel for all parties that Chicago Lloyds on passage of the first Lloyds Act in Illinois in 1927 filed a copy of the power of attorney which has been introduced in evidence with the Department of Trade and Commerce of Illinois.

Mr. Real: Now, I have just one or two matters here which I think ought to be in the record at this time. Can it be stipulated that on and prior to the 20th day of September, 1938, the Claimant had notice of the liquidation proceedings in the Superior Court of Cook County and of the order of injunction issued by that court?

Mr. London: Let me see that date, will you?

Mr. Barnes: September 28, 1938.

Mr. London: What is the date of the appointment?

Mr. Real: February 9th.

Mr. Barnes: November 9, 1938.

Mr. London: Yes, it may be stipulated, because he filed a claim.

Mr. Tannenbaum: This doesn't show that he had knowledge of the injunctional order.

Stipulation that claimant received notice of the institution of the liquidation proceedings offered and received in evidence as Liquidator's Exhibit 1.

Liquidator's Exhibit 2 (Claim of Charles B. Morris) and Liquidator's Exhibit 3 admitted in evidence.

[fol. 42] Mr. Real: Just one other matter. Since there is no stipulation that Charles B. Morris or his counsel had specific notice of the injunction order, I want to reserve the right to produce some evidence on that.

Claimant's Exhibits 12, 13, 14, 15, 16 and 17 offered and received in evidence.

Objections by Claimant

Objections by Charles B. Morris, claimant, to amended report of Master in Chancery. Objects to form of report in that it is uncertain whether the Master intended to make a distinction between the twenty-three paragraphs following the heading: "The Facts as Summarized by the Master From the Evidence Submitted, Both Oral and Docu-

mentary" and the matter following the heading "Findings of the Master Derived From a Consideration of the Evidence Herein as Summarized by the Master in His Foregoing Statement of the Facts" and it is not stated whether the twenty-three paragraphs following the first heading are intended to be or are findings of fact. Also objects to statement in first paragraph of report that the Master took the testimony of witnesses produced, and the reference to oral evidence in the Master's report, because no oral evidence was introduced before the Master.

Objects to Finding No. 4 because it fails to find that, in accordance with the statutes of Missouri by written instrument dated November 2, 1925, Chicago Lloyds appointed and authorized the Superintendent of the Insurance Department of Missouri for the purposes mentioned in the statute recited therein "to do any and all the things in said section specified in its behalf to be done, by said Superintendent," and that said instrument provides "here- [fol. 43] by further consenting that service of process as therein referred to upon such Superintendent shall be valid and binding, and be deemed personal service upon the company." (Claimant's Exhibit No. 3.)

Objects to Finding No. 4 for failure expressly to find that by instrument (Claimant's Exhibit No. 5) dated February 28, 1927, Chicago Lloyds appointed the Superintendent of the Insurance Department of Missouri the true and lawful attorney in and for Missouri upon whom all process against Chicago Lloyds * * * may be served in any action or special proceeding against them, subject to "and in accordance with all the provisions of the statutes and laws of said State of Missouri now in force, and such amendments thereto as may hereafter be made. And the said attorney is hereby duly authorized and empowered as my agent, and as the agent of the said Chicago Lloyds Underwriters its attorney in fact or its subscribers, to receive and accept service for and in behalf of the said Chicago Lloyds Underwriters its attorney in fact or its subscribers in all the actions mentioned above; and service of process upon, or acceptance of service of process by said attorney shall be valid and binding, and be deemed personal service upon said Chicago Lloyds Underwriters its attorney in fact or its subscribers; and this authority of said attorney shall continue is force so long as said Chicago Lloyds Underwriters its attorney in fact, or its subscribers shall have

any contracts or liabilities outstanding in the State of Missouri."

Objects to Finding No. 13 insofar as it fails to state that the matters stated were not established by independent [fol. 44] proof but were disclosed merely by said order of February 9, 1938, and that said order also discloses that on February 9, 1938, the same day on which the petition mentioned in Finding No. 12 was filed, there was also filed a consent in writing by Chicago Lloyds, acting through its attorney in fact, Associated Underwriters, Inc., to the order entered February 9, 1938.

Objects to Finding No. 14:

(A) The matters stated therein are irrelevant, immaterial and incompetent, and do not tend to establish any reason for disallowing the claim of claimant based on said judgment of April 7, 1941, or for not according full faith and credit to said judgment.

(B) It is not expressly found therein, or elsewhere in the report, that said order was entered without notice to "creditors or persons having claims against Chicago Lloyds", including claimant.

(C) It is not expressly found therein, or elsewhere in the report, that there is no evidence that claimant or his attorneys had notice or knowledge that the order of February 9, 1938, contained any provision restraining the prosecution of suits pending on that date against Chicago Lloyds, and that said order of February 9, 1938, does not restrain the prosecution of suits pending on that date against Chicago Lloyds and does not purport to do so.

Objects to Findings Nos. 17 and 18 because the matters therein stated are irrelevant, immaterial and incompetent and do not affect the validity and binding effect of the judgment in question and state no cause or reason for [fol. 45] not according full faith and credit thereto.

Objects to Finding No. 19 because it fails to find that the Circuit Court of the City of St. Louis was and is a court of record in and for said city, and, under the constitution and statutes of Missouri, had jurisdiction of the subject matter of said suit against Chicago Lloyds and others and jurisdiction of the parties thereto.

Objects to statement in Finding No. 21 that "the matter was then referred to me for hearing and recommenda-

tion", though order of reference only directs the Master to "report to this Court his findings with respect thereto".

Objects to statement in Finding No. 22 that it should be noted that claimant relies entirely for proof of the claim upon his Exhibit 2, which is a transcript of the Morris judgment in the Circuit Court, City of St. Louis, and fails to find that claimant relies upon said exhibit and the other exhibits and documentary evidence introduced and the stipulations appearing in the transcript of proceedings before the Master.

Objects to Finding No. 2 under the heading "Findings of the Master Derived from a Consideration of the Evidence Herein as Summarized by the Master in his Foregoing Statement of the Facts" because:

(A) It is not a finding of fact.

(B) It is contrary to the law and the evidence; that from the uncontradicted evidence and other findings by the Master, it appears that the claim of Charles B. Morris is based upon the judgment rendered April 7, 1941 in the Circuit Court, City of St. Louis, a court of record having [fol. 46] jurisdiction of the parties and the subject matter, and, under Section 1 of Article IV of the Constitution of the United States, full faith and credit must be accorded it.

(C) To refuse to accord full faith and credit to said judgment is to deny claimant his rights under Section 2 of Article IV of the Constitution of the United States and is a violation of Section 1 of Amendment XIV to the United States Constitution.

(D) No evidence supporting the conclusion "that the recommendation (of the Liquidator) is sustained in fact" was introduced or offered on behalf of the Liquidator or of the Underwriters.

Objects to Finding No. 3 under said second heading as immaterial.

Objects to Finding No. 4 under said second heading because it is not a finding of fact, is erroneous in law and contrary to the evidence, and the Master ought to have concluded that claimant established his claim by introducing in evidence transcript of the record, proceedings and judgment, duly exemplified and authenticated according to the Act of Congress, in the Circuit Court of St.

Louis in cause No. 206424, series "B" (being the judgment in question).

Objects to report for failure to find the provisions of Section 22 of Article VI and Section 24 of Article IX of the Constitution of Missouri, and Sections 724, 725, 726, 727, 728, 729, 732, 5892, 5893, 5894, 5897, Article 4 of Chapter 5 and each section thereof, and Article 10 of Chapter 37 and each section thereof, all being part of the 1929 Revised Statutes of Missouri, reference to all of [fol. 47] which provisions is hereby made and the same are incorporated herein as if copied.

Objects to matter stated under heading "Conclusions of Law" because they are not conclusions at all but mere argument, and are erroneous in law; the statement of the legal question presented by the undisputed facts is inaccurate; the statement of the admissions and contentions on behalf of claimant is erroneous; the arguments advanced against according full faith and credit to a judgment of a sister State are unsound and the Master erroneously assumes that the Liquidator was appointed by the Court.

Objects to matter stated under the heading "Recommendations".

As to the first paragraph because the order of reference merely directs the Master to report his findings; the paragraph is not a recommendation but in the nature of a conclusion of law, and is erroneous in law and contrary to the facts; and notwithstanding the Master states therein that the said judgment is not "conclusive" upon Liquidator, the effect of this conclusion is that said judgment is of no force and effect as against Liquidator, not binding upon him and not to be accorded full faith and credit.

As to the second paragraph because the order of reference merely directs the Master to report his findings; the recommendation is contrary to law and to the evidence and is inconsistent with the Master's findings; and it fails to accord full faith and credit to the judgment in question and denies to claimant his rights under Section 2 of Article IV of the United States Constitution and violates Section 1 of Amendment XIV of the United States Constitution. [fol. 48] The foregoing objections are all marked "Overruled" in the margin of each objection with the signature of the Master underneath the same.

Objections of Various Underwriters

Objections to Master's modified report of "Various Underwriters Represented by Campbell, Clithero and Fischer".

1. Object to failure to find that underwriters were not individually served with summons in the suit (in which the judgment was rendered) and to find that said underwriters did not enter their appearance in said suit.

2. Objects to failure of Master to find that Robert Roessel and Associated Underwriters, Inc., or either of them, were acting in excess of and outside the scope of their authority as agent or attorney-in-fact for Chicago Lloyds at time or times that they or either of them instituted or caused to be instituted any criminal proceeding against claimant.

3. Objects to failure to find that the Circuit Court of the City of St. Louis, Missouri, did not have jurisdiction over the persons of the underwriters of Chicago Lloyds individually in the suit referred to in objection No. 1.

4. Objects to failure of Master to find as conclusions of law that the said underwriters are not bound by the judgment obtained by claimant and that said judgment is not payable or subject to satisfaction out of the assets in the hands of the Liquidator belonging to said underwriters.

All of said objections are marked "Overruled" in the margin of each objection and signed by the Master.

Claimant's Exhibit 2

Exemplified transcript of record in cause No. 206424, [fol. 49] series "B", in the Circuit Court, City of St. Louis, Missouri, wherein Charles B. Morris is plaintiff and Associated Underwriters, Incorporated, a corporation, Associated Underwriters, Incorporated, a corporation, Attorney in fact for Chicago Lloyds, a voluntary association, Chicago Lloyds, an unincorporated association, and Robert A. Roessel, are defendants, duly authenticated in accordance with Title 28 Section 687 of the Judicial Code of the United States, as follows:

Petition filed August 24, 1934, states that Associated Underwriters, Inc., is and at all times therein stated was

an Illinois corporation; that Chicago Lloyds is an aggregation of individuals not incorporated and engaged exclusively in the business of writing and issuing policies of insurance * * * insuring * * * against loss by fire and other types of insurance (naming them); that said Associated Underwriters, Inc. is the attorney in fact for Chicago Lloyds; that Chicago Lloyds is and at all times herein stated was duly authorized by the Insurance Department of Missouri to carry on and has carried on such insurance business in the name of Chicago Lloyds in Missouri; that said Roessel is and at all times therein stated was an attorney at law and the attorney for said other defendants.

That for many years, to wit, twenty years, plaintiff was engaged in the insurance agency business and had a large acquaintance among insurance companies and agents and persons desiring insurance and others; that on February 8, 1929, he entered into a contract with Associated Underwriters, Inc., as attorney in fact for Chicago Lloyds, whereby he was appointed the agent for Associated Under- [fol. 50] writers, Inc., attorney in fact for Chicago Lloyds, and Chicago Lloyds to negotiate and effect fire (and other) insurance for Chicago Lloyds in Missouri; that by said agreement plaintiff agreed to make at least every third day daily reports and endorsements of insurance policies issued through his office and on or before the 10th day of each month to make a monthly account current report to defendants showing a detailed statement of business done by him for them during preceding month, balances due and owing by him to them and further agreed to pay the balances shown to be due them on said reports sixty days thereafter, which due date was thereafter changed to seventy-five days and later to ninety days; that plaintiff should receive as his compensation 20% of all net premiums of business written or renewed by him, and credit for same was taken by him in all monthly reports; that no fiduciary relation was created as to premiums collected on insurance written by him for defendants, but the relation of debtor and creditor was created between them for the balance shown to be due from him to them in each monthly statement, whether or not premiums due on insurance policies were collected by plaintiff; that during the performance of said contract plaintiff and said defendants so treated said balances and plaintiff deposited all premiums collected by him in his own general bank account in which all moneys received

by him were commingled, and remitted amounts shown to be due defendants on said monthly statements from time to time by his own personal checks, whether collected by him or not, and that at no time during said period did defendants [fol. 51] ever object to same; that he conducted a general insurance business in Missouri, established and maintained his own offices at his own expenses in St. Louis, had agents representing him in various parts of Missouri, represented other insurance companies in obtaining and writing insurance, and that writing insurance for defendants was but a part of his general insurance business, all of which was known to defendants.

That due to the general business depression in 1930, 1931 and 1932, he became delinquent in his remittances under and according to the terms of said contract, and extensions of time to pay same were given him by defendants from time to time until June, 1932, when defendants placed same in the hands of said Roessel, their attorney, to collect or to enforce and coerce collection; that said Roessel did not know or have legal justification for claiming that plaintiff was guilty of the crime of embezzlement and that there was probable cause for his prosecution for same; that under the terms of said contract plaintiff was merely indebted for premiums collected to Chicago Lloyds and Associated Underwriters, Inc., its attorney in fact, yet with a malicious design of coercing payment by threats of criminal prosecution, he (Roessel) made representations to the Circuit Attorney's office that plaintiff was guilty of the crime of embezzlement, and persuaded said office to order the arrest of plaintiff on a pretended charge of suspected embezzlement, to present said charge to the Grand Jury, and said defendant appeared before said Grand Jury, as a witness and gave testimony to procure plaintiff's indictment and procured his indictment on a charge of embezzlement and appeared in court [fol. 52] at the trial of said case and gave testimony before the court and jury, all wilfully, intentionally, wrongfully and maliciously, and without any probable cause therefor.

That on October 13, 1932, defendants wilfully and maliciously and without probable cause therefore, through said Roessel, their agent and attorney, lodged a complaint with the Circuit Attorney of St. Louis, Missouri, that plaintiff had committed the crime of embezzlement and had converted to his own uses premiums amounting to $2,410.58, the property of Associated Underwriters, Inc., without its assent,

and procured said Circuit Attorney to order the arrest of plaintiff; that the Sheriff of the City of St. Louis, pursuant to such order, arrested plaintiff and imprisoned him in the St. Louis City Jail for the space of one day and on October 14, 1932, plaintiff was again arrested on said charge and remained in jail one day and was compelled to and gave a bond in the sum of $5,000.00 to answer any charge that might be found against him; that thereafter on November 28,1932, plaintiff was again arrested on a charge of embezzlement from defendant, Associated Underwriter's, Inc., at defendants' instance and request and imprisoned and remained in jail two days and until released on bond.

That defendants and their attorneys and agent appeared before the Grand Jury of the City of St. Louis, gave testimony and procured plaintiff to be indicted by it, which indictment was filed in the office of the Clerk in the Circuit Court for Criminal Causes on December 2, 1932, wherein plaintiff was falsely charged with having embezzled from Associated Underwriters, Inc., as its agent, clerk, collector [fol. 53] and servant, defendants well knowing he was neither with regard to collections of premiums, the sum of $2,410.58, falsely alleging same to be the property of and belonging to Associated Underwriters, Inc., and a warrant was issued thereon and plaintiff was arrested, imprisoned and remained in jail for eight day and was compelled to give bail in the sum of $2500.00 to answer said charge.

That thereafter defendant pleaded not guilty to said charge, and, after several continuances at defendants' request, over plaintiff's protests and objections, said cause was finally set for trial October 25, 1933, and was then heard and tried in the Circuit Court of Criminal Causes before the Court and a Jury; that defendants, their said attorney, agents and employees appeared as witnesses and gave testimony and prosecuted plaintiff for said alleged offense, and did actively, intiontionly, wrongfully and maliciously prosecute said unfounded charge against plaintiff; that upon the conclusion of said trial, the Judge of said Court sustained a demurrer to the evidence of the State, and instructed the Jury to return a verdict in facor of defendant, which was accordingly done and plaintiff was discharged and fully acquitted of said offense.

That plaintiff incurred indebtedness to sureties on said bonds in the sum of $300.00; and indebtedness for attorney

fees in said action in the sum of $300.00 and was prevented from continuing his occupation as insurance agent from October 13, 1932, because of said charge being held and pending against him, and was compelled to devote much time to said case and in attending to said proceedings.
[fol. 54] That by reason of the premises he was greatly injured in his good name, fame and reputation, was exposed to public hatred, contempt and ridicule, suffered disgrace, humiliation and mental anxiety, and from the shame and disgrace of being arrested and imprisoned in the City Jail, all to his damage in the sum of $50,000.00; and by reason of the maliciousness of defendants in the institution and prosecution of said proceedings he prays a judgment for the further sum of $50,000.00 for exemplary and punitive damages.

Summonses in said cause dated August 24, 1934, one directed to Sheriff of Cole County, Missouri, for service upon defendant, Chicago Lloyds, an unincorporated association, and the other to Sheriff of the City of St. Louis, Missouri, to be served upon defendants, Associated Underwriters, Inc., a corporation, Associated Underwriters, Inc., a corporation, Attorney in fact for Chicago Lloyds, a voluntary association, and Robert A. Roessel.

Return of Sheriff of City of St. Louis showing service of last named summons and of said petition on August 27, 1934, on Associated Underwriters, Inc., and on Associated Underwriters, Inc., attorney in fact for Chicago Lloyds, an unincorporated association by serving its agent, E. L. Werner.

Proof of service of said summons directed to Sheriff of Cole County, by said Sheriff in said Cole County on August 25, 1934, upon said Chicago Lloyds, an unincorporated association, by delivering a true copy of the writ and of said petition to the Chief Clerk to the Superintendent of the Insurance Department of Missouri, both the Superintendent [fol. 55] and Deputy Superintendent of said Department being absent from said County and he being the person authorized by law to acknowledge and receive and upon whom to serve process for and in behalf of said defendant, under Section 5675 of the Revised Statutes of Missouri 1929.

Petition of Chicago Lloyds for removal of cause to District Court of the United States in and for Eastern Division of the Eastern Judicial District of Missouri.

Alias summons dated September 15, 1934, issued to the Sheriff of said City of St. Louis for service upon Robert A. Roessel and return of said Sherriff showing service thereof and of said petition on September 19, 1934.

Order entered September 13, 1934, granting the prayer of petition filed for removal of cause to said District Court.

Manadate from said District Court filed January 13, 1938, ordering said cause remanded to said Circuit Court on January 7, 1938.

Order entered March 17, 1941, as follows:

Now at this day this cause coming on for hearing come the parties hereto by their respective attorneys; thereupon said parties waive the intervention of a jury and present this cause to the Court upon the pleadings, evidence and proof adduced, and at the close of the plaintiff's case the plaintiff dismisses as to the defendant Robert A. Roessel; thereupon the trial being terminated this cause is submitted to the Court, and the Court having heard and duly considered the same and not now being sufficiently advised thereof takes time to consider thereof. [fol. 56] Separate answers of the defendants filed by leave of Court.

Said separate answers of defendants are in words and figures as follows, to wit:

Answer of Associated Underwriters, Inc., attorney-in-fact for Chicago Lloyds (same as answer filed by it in said District Court).

Defendant, appearing specially and for purpose of challenging jurisdiction of Court and for answer to petition, states that this Court has no jurisdiction over its person because it is a corporation organized and existing under the laws of Illinois; that as such it is not engaged in nor doing business within Missouri, nor has it a place of business or office in Missouri, nor does it transact any business in Missouri, nor has it ever entered Missouri for the purpose of transacting any of its business, nor has it any office or a chief or any other office in this State or any agent or officer in charge of any office in this State or any agent or employee in this State.

Denies that E. L. Werner is agent of said defendant and in charge of its business in this State.

Denies that plaintiff was prevented from conducting his occupation as insurance agent as alleged in his petition and states that prior to October 13, 1932, his license as

an insurance agent and/or broker wsa revoked by the Insurance Department of Missouri for cause.

Denies that by reason of the premises in plaintiff's petition set forth he was greatly injured in his good name, fame and reputation and denies each and every other allegation in plaintiff's petition contained.

[fol. 57] Separate answer of defendant, Associated Underwriters, Inc., identical in wording to the preceding answer.

Order and judgment entered and rendered April 7, 1941, as follows:

This cause having heretofore been submitted to the Court on the 17th day of March, 1941, upon the pleadings, evidence and proof adduced, and on said last mentioned date the parties hereto having appeared by their respective attorneys of record and having presented this case to the Court without the intervention of a jury, a jury having been waived, and on said last mentioned date the Court having taken the same under advisement, now at this day the Court being full advised of and concerning the premises doth find the issues herein joined in favor of the plaintiff and against the defendants, and doth find that the defendants have been duly served with process as required by law, and that the Court has proper jurisdiction over the person of said defedants and over the subject matter of this suit, and the Court doth further find that said defendants are indebted to the plaintiff in the sum of $35,000.00 actual damages; and in the sum of $15,000.00 punitive damages, aggregating the total sum of $50,000.

Wherefore, it is ordered, adjudged and decreed by the Court that the plaintiff have and recover of the defendants the sum of Fifty Thousand ($50,000.00) Dollars, together with interest thereon at the rate of six per cent per annum, from this date until paid, together with the costs of this proceeding for which let execution issue.

CLAIMANT'S EXHIBIT 1

Form of power of attorney from individual underwriters [fol. 58] to Associated Underwriters, Inc., in effect at Chicago Lloyds prior to April 1, 1937, (being the same docu-

ment as that attached as Exhibit "B" (Rec. 52) to the petition filed in this cause June 24, 1938) as follows:

Appoints Associated Underwriters, Inc., to insure persons * * * against loss or damage * * * lawful for the undersigned to insure * * * * upon such terms and at such rates of premium as said attorney may from time to time deem proper; * * * to collect and sue, in its own name, for any and all premiums and other moneys which may at any time become due and owing to the undersigned, or in which the undersigned may have any interest by reason of any contract of insurance, * * * to receive and admit service of process in any suit at law or equity, brought upon or by reason of the issuance of any policy, and to cause an appearance to be made on behalf of the undersigned in any such suit; * * * to file any reports, statements, applications or other writings required by the laws, or regulations of any state, * * * or by the Insurance Department thereof; to make, constitute and appoint * * * the Insurance Commissioner or Insurance Superintendent of any other state, or of any other country, as may be required by the statutes of such state, or country respectively, the true and lawful attorney of the undersigned * * * in and for such other state or country, as the case may be, on whom all legal process against the undersigned, as an underwriter upon any such policy of insurance, or by reason of the execution of this power of attorney, may be served in any action or proceeding, subject to and in accordance with all of the provisions and the [fol. 59] statutes and laws of * * * such other state or country, as are now in force, or as mayhereafter be adopted; and any service of any such process from any court so served on said attorney, shall be valid service on the undersigned.

* * * * * * *

Twenty-Second: Said attorney shall be entitled to receive and take as full compensation for its service and expenses in procuring and writing insurance on behalf of the undersigned; a fixed commission of thirty per cent (30%) of all cash realized by said attorney for the undersigned, by way of net premiums, * * * . In addition to said fixed commissions aforesaid, said attorney shall be entitled to receive a further and contingent commission of five per cent (5%) on the net profits realized for the undersigned here-

under during each fiscal year; such net profits to be computed on the basis of gross premiums collected and after deducting all losses paid, fees and commissions paid to said attorney, return premiums and all other costs, charges, and expenses to the undersigned for conducting said insurance business hereunder. Said attorney shall, out of its fixed and contingent commissions, pay all expenses of every character excepting the following, namely: losses; taxes, dividends out of profits; Trustee's fees and expenses; and expenses incidental to the adjustment of losses, including counsel fees and legal expenses.

CLAIMANT'S EXHIBIT 3

Certified copy of appointment of Superintendent of Insurance of Missouri to acknowledge or receive service of process, executed on form provided by the Superintendent of Insurance on November 2, 1925, by Robert E. Kenyon, [fol. 60] President, and B. N. Anderson, Secretary, Appoints Superintendent of Insurance Department of Missouri in accordance with Section 7042 of the Revised Statutes of Missouri of 1909, which provides:

"Process against foreign companies, appointment of superintendent to receive or accept service of—Any insurance company not incorporated by or organized under the laws of this state, desiring to transact any business by any agent or agents in this state shall first file with the superintendent of the insurance department a written instrument or power of attorney, duly signed and sealed, appointing and authorizing said superintendent to acknowledge or receive service of process issued from any court of record * * * and upon whom such process may be served for and in behalf of such company in all proceedings that may be instituted against such company in any court of this state * * * and consenting that service of process upon said superintendent shall be taken and held to be as valid as if served upon the company, according to the laws of this or any other state. Service of process as aforesaid, issued by any such court, as aforesaid, upon the superintendent, shall be valid and binding, and be deemed personal service upon such company, so long as it shall have any policies or liabilities outstanding in this state, although such company may have withdrawn, been excluded from or ceased to do business in this state, * * *

and such service shall confer jurisdiction. * * * and if any such company shall fail, neglect or refuse to appoint and maintain, within the state, an attorney or agent, in the manner hereinbefore described, it shall forfeit the right to do or continue business in this state."

[fol. 61] for the purposes mentioned in said section, to do any and all things therein specified in its behalf to be done by said Superintendent, thereby further consenting that service of process as therein referred to upon such Superintendent shall be valid and binding and be deemed personal service upon the company so long as it shall have any policies or liabilities outstanding in Missouri.

CLAIMANT'S EXHIBIT 4

Letter dated March 22, 1941, from H. Sam Priest, Clerk of the Circuit Court (of the City of St. Louis) to Special Deputy in Charge of Liquidation of Chicago Lloyds at Chicago, Illinois. States that case of *Charles B. Morris* v. *Associated Underwriters, Inc.*, and *Chicago Lloyds* was set for trial in Said Court March 17, 1941, upon which day Robert A. Roessel, who had appeared as counsel of record for both said defendants, withdrew as counsel exhibiting to the Court a letter dated April 21, 1938, written by said Special Deputy wherein he stated that it was not his desire that Roessel continue in the defense of said suit; that the Court has heard the evidence and taken the same under submission and has directed said Clerk to inform said Special Deputy of the above and that the latter make known his reaction to the same forthwith, as he desires to pass judgment upon the matter.

CLAIMANT'S EXHIBIT 5

Certified copy of power of attorney, similar to Claimant's Exhibit 3 dated February 28, 1927, executed by Robert E. Kenyon, President of Associated Underwriters, Inc., attorney in fact for Chicago Lloyds "being legally authorized thereto by every member of said Chicago Lloyds," appointing Ben C. Hyde Superintendent of the Insurance [fol. 62] Department of the State of Missouri and his successors in office attorney in Missouri on whom all process against Chicago Lloyds, its attorney in fact or policyholders may be served, in any action or proceeding against

Chicago Lloyds, its attorney in fact or policyholders in Missouri, subject to and in accordance with all the provisions of the statutes and laws of Missouri, and to receive and accept service for and in behalf of said Chicago Lloyds, its attorney in fact or subscribers in all such actions. Service of process upon or acceptance of service of process by said attorney shall be valid and binding and be deemed personal service upon said Chicago Lloyds Underwriters its attorney in fact or its subscribers, and this authority of said attorney shall continue in force as long as said Chicago Lloyds Underwriters, its attorney in fact or subscribers, shall have any contracts or liabilities out-standing in Missouri.

CLAIMANT'S EXHIBIT 6

Certified copy of letter dated June 27, 1936, from Chicago Lloyds to Superintendent of Insurance of Missouri, advising that Chicago Lloyds has decided to withdraw its application for a license to write automobile insurance in Missouri, and a copy of letter acknowledging receipt thereof.

CLAIMANT'S EXHIBIT 7

Certified copies of pleas to jurisdiction of Associated Underwriters, Inc., individually and as attorney in fact for Chicago Lloyds, filed in said District Court in said suit of Charles B. Morris.

CLAIMANT'S EXHIBIT 8

Certified copy of motion of defendants, Chicago Lloyds and Robert A. Roessel, to strike plaintiff's amended motion in said District Court to remand from the files.

[fol. 63] CLAIMANT'S EXHIBITS 9, 10, AND 11

Certified copies of order and of documents filed in the District Court in said cause, being the order overruling pleas to jurisdiction of Associated Underwriters, Inc., individually and as attorney in fact for Chicago Lloyds, and special demurrers of Chicago Lloyds and Robert A. Roessel to plaintiff's petition, and being the special demurrer of Chicago Lloyds, the separate answer of defendant Chicago Lloyds, an unincorporated association, and the separate answers of Associated Underwriters, Inc., individually and as attorney in fact for Chicago Lloyds.

By said separate answer of Chicago Lloyds it states that the court has no jurisdiction over the person of said defendant because the Superintendent of the Insurance Department of Missouri is not authorized to accept service for it in this character and nature of action, that it denies specifically that plaintiff was prevented from conducting his occupation as insurance agent and states that prior to said 13th day of October, 1932, plaintiff's license as an insurance agent and/or broker was revoked by the Insurance Department of Missouri for cause and it denies that by reason of the premises in plaintiff's petition he was greatly injured in his good name, fame and reputation, and denies each and every other allegation in plaintiff's petition.

Answers of Associated Underwriters, Inc., individually and as attorney in fact for Chicago Lloyds, are the same as those in Record pages 300 to 303. (Not abstracted here. See Abst. 48.)

CLAIMANT'S EXHIBITS 12 AND 13

Certificates by Superintendent of Insurance of Missouri [fol. 64] that Chicago Lloyds has complied with the requirements of the laws of said State and is authorized to do the business of fire and marine insurance in Missouri until the first day of March, 1933 and 1935, respectively.

CLAIMANT'S EXHIBIT 14

Being certified copies of application by attorney in fact for Chicago Lloyds for license authorizing and empowering it to transact fire, marine and allied lines for the year ending December 31, 1931, and similar application for the year ending December 31, 1932.

Receipt of Roessel and Minton, attorneys for Chicago Lloyds, acknowledging receipt on January 22, 1934, on behalf of Chicago Lloyds of petition and summons served on the Deputy Superintendent of Insurance on January 20, 1934, in said suit of Charles E. Morris.

Similar receipt by Associated Underwriters, Inc., by C. A. Farwell, Assistant Secretary, acknowledging receipt of petition and summons served upon the Chief Clerk of the Insurance Department of Missouri on August 25, 1934, in said suit of Charles B. Morris.

Claimant's Exhibits 15 and 16

Certified copies of list of underwriters composing Chicago Lloyds as shown by its annual statement for the year ending December 31, 1932, and December 31, 1936 respectively, on file in and forming a part of the record of the Department of Insurance of the State of Illinois.

Claimant's Exhibit 17

Notice that claimant will ask the court to take judicial notice, pursuant to the Illinois statute, of the following:

[fol. 65] Section 22 of Article VI and Section 24 of Article IX of the Constitution of the State of Missouri.

Sections 724, 725, 726, 727, 728, 729, 732, 5892, 5893, 5894, 5897; also Article 4 of Chapter 5 and Article 10 of Chapter 37 and each section of each of said two articles; the foregoing sections and articles being part of the 1929 Revised Missouri Statutes.

Liquidator's Exhibit 1

Liquidator's Exhibit 1 consisting of the following:

Notice dated February 15, 1938, from Ernest Palmer, Director of Insurance of the State of Illinois, as Liquidator of Chicago Lloyds, to its * * * creditors * * * that:

1. He has been directed by an order of the Superior Court, entered on February 9, 1938, to take possession of the property of and liquidate * * * Chicago Lloyds pursuant to the Illinois Insurance Code, and has appointed F. J. Bartsch, Special Deputy, as his agent to liquidate said business and all communications and transactions relating thereto should be addressed to and had with Bartsch.

2. In accordance with said order, Chicago Lloyds was adjudged insolvent and all insurance policies and contracts of Chicago Lloyds are terminated, and the rights and liabilities of all persons under insurance or other contracts are fixed, as of February 15, 1938, pursuant to the Illinois Insurance Code.

3. All persons indebted to Chicago Lloyds or having any of its property in their possession are required forthwith [fol. 66] to render an accounting of such debts and to pay the same and deliver such property to Bartsch.

4. Pursuant to the further order of Court, all persons, firms and corporations having any accounts, debts, claims or demands against Chicago Lloyds or claiming any interest in any funds or property in the hands of Liquidator, are required to file verified proof of their claims with said Special Deputy, and final date set by the Court for filing claims is November 15, 1938.

5. Liabilities will be determined as to all claims duly presented and all assets distributed without further notice and persons who fail to comply with the directions herein will not share in such distribution of assets.

Form of proof of claim enclosed therewith.

Notice to policyholders of Chicago Lloyds who have claims pending against them as to procedure to be followed and action to be taken by them.

LIQUIDATOR'S EXHIBIT 2

Verified proof of claim of Charles B. Morris on form furnished by Liquidator, filed with the Insurance Department of Illinois, Bureau of Liquidations, Conservations and Rehabilitations on September 21, 1938, states that the facts constituting the claim are that suit for $50,000 actual and $50,000 punitive damages for false arrest and malicious prosecution, was filed originally on January 19, 1934 in the Circuit Court of the City of St. Louis, Missouri, against Associated Underwriters, Inc., and Chicago Lloyds; that later an amended petition was filed joining Robert A. Roessel, as co-defendant; that case was removed to the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri and remanded to [fol. 67] Circuit Court on January 7, 1938, where cause is now pending, ready for trial at the September Term of Docket.

A brief statement of the cause of action and petition is that on February 8, 1929, plaintiff entered into a contract with defendant, Associated Underwriters, Inc., and Chicago Lloyds, to act as their agent; that on October 13, 1932, all of defendants wilfully, maliciously and without probable cause, through Robert A. Roessel, as agent and attorney, procured the arrest of plaintiff, had him incarcerated on a false charge of having embezzled funds of said companies, as shown by petition thereto attached (which is a copy of

petition contained in Claimant's Exhibit 2, not abstracted here. See Abst. 41.)

LIQUIDATOR'S EXHIBIT 3

Copy of letter dated March 26, 1941, from Glenn, Real & Browning (attorneys for Liquidator) to Clerk of said Circuit Court, St. Louis, Missouri, *in re Morris* v. *Associated Underwriters, Chicago Lloyds, et al.* States that said Clerk's letter dated March 22, 1941, addressed to F. J. Bartsch, Special Deputy in charge of Liquidation of Chicago Lloyds, was referred to them for reply; that Chicago Lloyds is being liquidated in proceedings pending in the Superior Court of Cook County, case No. 38 S 1022 and the order appointing the Director of Insurance of Illinois as Liquidator was entered February 9, 1938, that Robert A. Roessel represented Chicago Lloyds in said proceedings (in Missouri) prior to the appointment of a Liquidator and withdrew therefrom at Liquidator's request; that it is Liquidator's position that plaintiff in said suit is enjoined from proceeding to obtain judgment against Chicago [fol. 68] Lloyds; that the injunction order entered February 9, 1938, specifically provides that:

"All persons are hereby immediately restrained and enjoined from obtaining, or attempting to obtain, preferences, judgments, attachments or other like liens * * * until the further order of the court."

That liquidation proceedings in this State being an action in rem is analogous to a bankruptcy proceeding, and the injunction order is good without notice and without service of process upon a violator of same; that while they fully appreciate that the injunction does not prevent the court from entering judgment, they believe that plaintiff, by asking the court to proceed to judgment against Chicago Lloyds, is in direct violation of the injunction, and should he bring such judgment into Illinois and attempt to enforce it here, he will be violating the injunction order.

That they regret they were not able to authorize Mr. Roessel to proceed to defend the judgment in said Court in order that this matter could be disposed of without the present situation arising where the court does not have the benefit of counsel; however the action of liquidator in the present instance conforms with the general practice es-

tablished by his office, and therefore he felt obliged to ask Mr. Roessel to withdraw.

OBJECTIONS TO FEES OF MASTER

Objections by Charles B. Morris to the fees of the Master in Chancery in connection with the claim of Charles B. Morris, on the grounds that the same are in excess of the amounts allowable under the law; that no sufficient showing is made for the allowance of the sum of $500.00 for reading pleadings and testimony, examining briefs and authorities, hearing arguments, preparing findings of fact and of law [fol. 69] and drawing report thereon, etc., as set forth in the Master's certificate attached to his report; that no showing is made of the time spent on the various matters for which said fee is requested and that said charge of $500.00 is made for services not contemplated by the order of reference.

FINAL DECREE

Final decree or order confirming Master's report with respect to claim #L-9554 of Charles B. Morris and disallowing said claim, entered September 28, 1944.

The court finds that it has jurisdiction of the parties and subject matter; that the findings of said Master in Chancery are proper, true and correct and that the objections to the Master's report filed by the claimant and by various underwriters represented by the firm of Campbell, Clithero & Fischer, which were ordered to stand as exceptions before the Court, were properly overruled by the Master.

That the judgment in favor of Charles B. Morris in Case No. 206424 in the Circuit Court of the City of St. Louis, Missouri, has no force or binding effect upon Liquidator and should not be considered in this liquidation proceedings as evidence of the liability or amount of damages of claimant against the assets of the Estate of Chicago Lloyds in this liquidation proceedings.

That Morris has wholly failed and refused to proceed or to offer proof or evidence before the Court or the Master, other than the transcript of judgment entered in said case No. 206424 and the other evidence introduced by claimant as shown by the transcript of testimony filed with the Master's report, with respect to the liability or amount of damages of claimant against Chicago Lloyds.

[fol. 70] That the questions of law and fact raised by the objections of various underwriters represented by Campbell, Clithero & Fischer to said Master's report are not properly before this Court and it should not now pass upon or decide any of said questions raised by these objections.

Orders, adjudges and decrees:

1. That the exceptions of claimant to said Master's report are overruled and said report in all respects approved and confirmed.

2. That the objections of said underwriters are overruled without prejudice to the right to renew said exceptions when and if the questions, or any of them, may become material and are properly before the Court.

3. That said Claim of Charles B. Morris is denied and disallowed; that his objections to the Liquidator's Tenth Report on Claims and his recommendation that said claim be disallowed are overruled and said report on claims and the recommendation of disallowance of said claim is approved and confined, and said claim disallowed in accordance with the recommendations contained in the Master's report.

That said cause coming on for further hearing upon said Master's report and the objections to fees of the Master filed by claimant, and the Court having heard the testimony of the Master and having examined and considered his report and his Certificate of Services, Fees and Charges attached to said Report, and having heard statements and arguments of counsel, and it appearing, and said Master and counsel conceding that an error was made in the Master's Certificate with respect to the folio charges and the fees fixed by Statute in the amount of $396.45, the Master [fol. 71] is entitled to compensation therefor in the sum of $114.60.

That the Court finds that the fees requested by said Master to be fixed by the Court in the sum of $500.00 are the fair and reasonable fees for the services performed by said Master in the consideration of the pleadings and testimony, examining briefs and authorities, hearing said cause and arguments, preparing findings of fact and of law and drawing his report thereon and that said fee is consistent with justice to all parties concerned in said matter.

Orders, adjudges and decrees that the objections to the fees of the Master of claimant filed on September 13, 1944, be sustained as to the item in the Master's Certificate of Services, Fees and Charges of fees fixed by Statute, and said amount is reduced from $396.45 and allowed for $114.60, and the item of Fees to be Fixed by the Court of $500.00 is approved and allowed to said Master for his services rendered in connection with the hearing of said claim and objections thereto and rendering said Report, and said fees in the total amount of $614.60 are hereby approved and allowed and taxed as costs against claimant and that execution issue therefor against claimant, to which said rulings and order claimant objects.

Further orders, adjudges and decrees that the original of the Master's Report may be incorporated in the record on any appeal taken from the entry of said Order.

Fixes the amount of a supersedeas bond on appeal from said Order at the sum of $5,000.00 and fixes the conditions of said bond and extends time for filing same.

[fols. 72-73] NOTICE OF APPEAL

Notice of appeal filed by Charles B. Morris on December 12, 1944, appealing from said order of September 28, 1944.

PRAECIPE

Praecipe for record and proof of service of notice of appeal and praecipe for record, filed December 15, 1944, by Charles B. Morris. Said proof of service has attached thereto several exhibits and shows service of the notice of appeal by mail on December 12, 1944, and by the posting of a copy of said notice of appeal in the office of the County Clerk of Cook County, Illinois, on December 13, 1944, and shows the service of the praecipe for record by mail on December 13, 1944.

Order entered on November 28, 1944, that all documents attached to the report of the Master in Chancery filed on June 16, 1944, together with all exhibits in the matter of the hearing of said claim, filed by said Master in a separate folder, each identified as such by mark of identification, may be incorporated with the original of said Master's report in the record on any appeal taken from said order of September 28, 1944.

CLERK'S CERTIFICATE

Certificate of Clerk that the above and foregoing is a true, perfect and complete transcript of the record according to the praecipe filed, except the original Master's report and exhibits, which were by order of court incorporated herein and made a part hereof.

J. L. London, Ford W. Thompson and Tannenbaum, Polikoff & Schmidt, Attorneys for Appellant.

[fol. 74] IN SUPREME COURT OF ILLINOIS

BRIEF FOR APPELLANT—Filed February 20, 1945

* * * * * * *

ERRORS RELIED ON

The Court erred:

1. In finding or holding that the findings of the master are proper, true and correct and that the claimant's objections to the master's report were properly overruled; in overruling the claimant's exceptions to said report; and in approving said report.

2. In overruling the claimant's objections to the report of the liquidator on the claim based upon the Missouri judgment and to the recommendation of the liquidator that said claim be disallowed; in approving the liquidator's tenth report on claims in so far as it recommended the disallowance of the claim on said Missouri judgment; and in disallowing said claim.

3. In finding that the Missouri judgment in favor of claimant and against Chicago Lloyds, *et al.*, has no force or binding effect upon the liquidator and should not be considered in the liquidation proceeding as evidence of the liability to claimant or of the amount of his claim; and in failing to hold that the liquidator was estopped by said judgment, and that it was *res judicata* and binding and conclusive evidence of the claim of appellant.

4. In failing to hold that the Missouri judgment was entitled to full faith and credit under Section 1 of Article IV of the Constitution of the United States, the Act of

[fol. 75] Congress enacted May 26, 1790, and the decisions of the Supreme Court of the United States; and in failing to give full faith and credit to said judgment.

5. In holding that the decree entered February 9, 1938, restrained claimant from prosecuting to judgment the action pending in Missouri.

6. In failing to hold that the decree entered February 9, 1938, did not restrain claimant from prosecuting the action then pending in Missouri to judgment, for the reason that the court did not have power or authority to restrain the claimant from prosecuting that action in as much as the judgment rendered therein would not be a lien upon the property in the possession of the liquidator.

7. In failing to hold that the decree entered February 9, 1938, did not restrain the claimant from prosecuting the action then pending in Missouri to judgment, for the reason that the court did not have jurisdiction over the claimant.

8. In failing to hold that Section 189 of the Illinois Insurance Code (which the court below construed as warranting the entry of an injunction against a person not a party to the proceeding and not served with process or notice, and over whom the court below had no jurisdiction, restraining him from prosecuting an action pending in a sister State, and as warranting, on the strength of that injunction, the refusal to allow a claim, based on a judgment obtained in the sister State, to share in the property of Chicago Lloyds in the possession of the liquidator) is unconstitutional for the reasons (1) that, so construed, it is inconsistent with Section 1 of Amendment XIV of the Federal Constitution because it deprives the claimant of his [fols. 76-77] property,—the right to prosecute the suit theretofore commenced in a sister State and the right to have his claim on a judgment rendered in his favor in that State allowed as a claim against Chicago Lloyds and entitled to share with other creditors in the assets of Chicago Lloyds—without due process of law; (2) that, so construed, it abridges the privileges and immunities of citizens of the United States, guaranteed by Section 2 of Article IV of the Federal Constitution, by denying to claimant the right to bring suit on the Missouri judgment to which Illinois, by Section 1 of Article IV, is required to give full faith and

credit; (3) that, so construed, it invades the privileges and immunities of claimant guaranteed by Section 1 of Amendment XIV to the Federal Constitution; and (4) that, so construed, it denies to claimant the equal protection of the laws guaranteed by that section.

9. In failing to hold that the court could not give extra-territorial effect to the injunction entered February 9, 1938, by refusing to give full faith and credit to the judgment of Missouri.

10. In allowing the sum of $500.00 to the master for his services in the consideration of the pleadings, testimony, etc.

[fols. 78-79] [File endorsement omitted.]

[fol. 80] IN THE SUPREME COURT OF ILLINOIS—MARCH TERM, A. D. 1945.

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel. PAUL F. JONES, Director of Insurance of the State of Illinois, (Petitioner) Appellee,

vs.

CHICAGO LLOYDS, (Respondent) Appellee,

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel. PAUL F. JONES, Director of Insurance of the State of Illinois, (Petitioner) Appellee,

vs.

CHICAGO LLOYDS, CHARLES N. ACKERMAN, et al., (Respondents) Appellees,

CHARLES B. MORRIS, (Claimant) Appellant

Appeal from Superior Court of Cook County.
Honorable Ulysses S. Schwartz, Judge Presiding.

Additional Abstract of Record by N. P. Parkinson, acting Director of Insurance of the State of Illinois, as Appellee —Filed April 25, 1945

ORDER FIXING TIME AND PROCEDURE FOR FILING CLAIMS

Order fixing time and procedure for filing claims entered on the 15th day of February, 1938, by the Superior Court of Cook County, Illinois.

Said Order provides that any and all persons, firms and corporations having any accounts, debts, claims and demands against Chicago Lloyds, or claiming any interest in any funds or property in the hands of the Liquidator [fol. 81] are hereby ordered and required to file verified statements of the nature, date of accrual and the amounts of their respective accounts, debts, claims or demands with his Special Deputy at the Bureau of Liquidations, Conservations and Rehabilitations, 175 West Jackson Boulevard, Chicago, Illinois, on or before the 15th day of November, A. D. 1938, and that no such person, firm or corporation having, or claiming to have, any claim or claims against said respondent, Chicago Lloyds, shall participate in the assets aforesaid, unless such claim or claims shall be so filed and presented.

It is further ordered that said Liquidator give public notice to be published once each week for three successive weeks in a newspaper of general circulation published in the City of Chicago, Illinois, of the time within, the manner in which, and the place where all such debts, accounts, claims or demands shall be filed, the first publication to be on or before the 1st day of March, 1938.

Further ordered that upon the filing of such claim or claims, said Liquidator shall examine into and investigate the same and report to the Court his recommendation as to whether the same shall be allowed in whole or in part, and if in part, what part, or entirely disallowed, and that upon the filing of such report and objections thereto, if any, the Court should take such further action in the premises as justice might require.

It is further ordered that all claims filed with the Clerk of this Court against the respondent, Chicago Lloyds, are referred to said Liquidator for investigation and report.

[fol. 82] Order on Liquidator's Tenth Report

The Order on Liquidator's Tenth Report on Claims entered by the Superior Court of Cook County, Illinois, on the 10th day of June, 1942, provided:

1. That leave be granted Liquidator to file said Tenth Report on Claims instanter.

2. That within fourteen days from the entry of said Order, Liquidator sent notice by mail, postage prepaid,

to each claimant named in Exhibits A and B attached to and made a part of Liquidator's Tenth Report on Claims at the address shown in their respective claims, notifying them of the filing of said Report and of the recommendations of the Liquidator upon each claimant's claim, and the time and the manner fixed therein for the filing of objections, and of the time fixed for the hearing upon said Report, his recommendations thereon and any objections filed thereto.

3. That all claimants whose claims were reported upon in said Report and Exhibits A and B thereto attached and upon which claims recommendations have been made by the Liquidator and all other interested parties of record, may file objections with the Clerk of the Court to the recommendations of said Liquidator on or before the 10th day of July, 1942, copies of said objections to be filed likewise with Liquidator's Special Deputy, 175 West Jackson Boulevard, Chicago, Illinois.

4. That a hearing upon said Liquidator's Tenth Report on Claims and upon such objections as may be filed against the Liquidator's recommendations on said claims is set for the 14th day of July, 1942, at 10:30 A. M.

[fol. 83] Master's Report.

Proceedings Before Master

Proceedings had and evidence taken in said cause before L. A. Wescott, Master in Chancery, on the 12th day of August, 1942.

Mr. Arnold, representing certain underwriters, made the following objection to the offer in evidence of Claimant's Exhibit 2.

Mr. Arnold: We wish to join in the objections made by the liquidator, and also in behalf of the underwriters whom we represent, that it nowhere appears from the judgment roll that those underwriters were made a party defendant to this proceeding, and as such, could not be made the basis of a claim against them in this proceeding; further, that the judgment would seek to establish the joint liability against the underwriters in violation of the express provisions of the power of attorney, which

is the authority under which Associated Underwriters was acting.

Mr. Arnold: In connection with my objection that the underwriters whom we represent were not made parties to this suit, also it appears from the judgment roll that summons was never served upon them nor were they notified of the pendency of the proceedings in any other manner.

That portion of claimant's claim in the amount of $12,500.00 for conversion of property has been abandoned.

Objection by Mr. Arnold to Claimant's Exhibit 5.

Mr. Arnold: We also object to the introduction of this exhibit, Claimant's Exhibit 5, as long as it purports to be a power of attorney executed by the president of Associated Underwriters, Inc., authorizing the superintend-
[fol. 84] ent of the insurance department of the state of Missouri as the agent to accept service and summons upon Chicago Lloyds Underwriters, in that the authority granted by this power of attorney is in excess of the authority which Associated Underwriters had under power of attorney granted to it by the various underwriters.

Liquidator's Exhibit 1 admitted in evidence.

Mr. Real: Just one other matter. Since there is no stipulation that Charles B. Morris or his counsel had specific notice of the injunction order, I want to reserve the right to produce some evidence on that.

Mr. Tannenbaum: Didn't we stipulate that Morris had notice?

Mr. Real: Stipulated that Morris had notice of the liquidation order.

Mr. Tannenbaum: And that notice was sent out.

Mr. Real: I don't know whether——

Mr. London: Yes.

Mr. Real: If it doesn't, I desire to show that he did have notice.

Claimant's Exhibit 12 admitted in evidence over objection as to the materiality of it in this proceeding.

Claimant's Exhibit 13 offered in evidence.

Mr. Arnold: I take it they are all going in subject to the same objections.

The Master: Yes, let it be marked and received in evidence.

[fol. 85] Claimant's (Charles B. Morris') Exhibit 14 offered in evidence.

Mr. Real: I just want to make a more specific objection than the one heretofore urged to these documents, with reference to the fourth document in this group exhibit (exhibits 12 to 17, inclusive), which will be Exhibit 14, and that being that the notice or summons shown there is addressed to the Chicago Lloyds in a suit between Morris as plaintiff and Chicago Lloyds as defendant, and the receipt on the bottom thereof is a receipt of Associated Underwriters, Inc., of Chicago, but from a perusal of the document it does not appear the Associated Underwriters is a party to the suit, that that notice is based upon.

Mr. Arnold: There will be a further objection to the notice, being Part 3 of this group Exhibit 14. There is no showing of an authority on the part of the persons purporting to receipt for the same on behalf of Chicago Lloyds, consequently, it would not constitute any valid or binding notice.

The Master: It will be admitted subject to the objection.

Claimant's (Charles B. Morris') Exhibit 15 admitted in evidence over the objection that it is immaterial and irrelevant in this proceeding.

Claimant's (Charles B. Morris') Exhibit 16 received in evidence subject to the same objections.

Claimant's (Charles B. Morris') Exhibit 17 received in evidence subject to formal objections.

Certificate of Master that the foregoing was all the evidence offered and received upon the hearing of the above entitled cause.

[fol. 86] CLAIMANTS EXHIBIT 2

Petition filed in the Circuit Court of the City of St. Louis, State of Missouri, on the 24th day of August, 1934, in the case of Charles B. Morris, plaintiff, vs. Associated Underwriters, incorporated, a corporation, et al., defendants, which is the Petition upon which judgment was subsequently rendered and which is reflected in Claimant's Exhibit 2. Paragraph three of said Petition is as follows:

"Plaintiff further states that due to the general business depression in 1930, 1931 and 1932, the plaintiff became *delinquent* in his remittances and payments of his indebtedness under and according to the terms of said contract, and

extensions of time to pay same were given plaintiff by said defendants from time to time, until to wit, June, 1932, when said defendants placed same in the hands of defendant, Robert A. Roessel, their attorney, to collect or to enforce and coerce collection; that the defendant, Robert A. Roessel, did not know, or have legal justification for claiming that the plaintiff was guilty of the crime of embezzlement, and that there was probable cause for his prosecution for same; that under the terms of his written contract with said defendants, which said defendant had, the plaintiff was merely indebted for the alleged premiums collected, to the defendants Chicago Lloyds and Associated Underwriters, Incorporated, attorney in fact for said Chicago Lloyds, yet, with a malicious design of coercing payment by and through threats of and a criminal prosecution, he made representations to the Circuit Attorney's office that the plaintiff was guilty of the crime of embezzlement, and, being a lawyer of ability and repute, he persuaded the Circuit Attorney's [fol. 87] office, through his persistence and representations, to order the arrest of the plaintiff on a pretended charge of suspected embezzlement, to present a charge of same to the Grand Jury, and said defendant appeared before said Grand Jury, as a witness, and gave testimony to procure the indictment of the plaintiff, and did procure the indictment of the plaintiff by the Grand Jury on a charge of the crime of embezzlement, and said defendant appeared in court at the trial of said case and gave testimony before the court and jury, all of which was done wilfully, intentionally, wrongfully and maliciously, and without any probable cause therefor."

Order entered by the Circuit Court, City of St. Louis, Missouri, on the 17th day of March, 1941.

"Now at this day this cause coming on for hearing come the parties hereto by their respective attorneys; thereupon said parties waive the intervention of a jury and present this cause to the Court upon the pleadings, evidence and proof adduced, and at the close of the plaintiff's case the plaintiff dismisses as to the defendant Robert A. Roessel; thereupon the trial being terminated this cause is submitted to the Court, and the Court having heard and duly considered the same and not now being sufficiently advised thereof takes time to consider thereof.

Separate answers of the defendants filed by leave of Court."

Separate Answer of the defendant, Robert A. Roessel, filed in said Court on the 17th day of March, 1941, was in words and figures as follows, towit:

[fol. 88] "Comes now the Defendant, and for answer to Plaintiff's Petition admits that he is now and was an attorney-at-law at all times in Plaintiff's Petition mentioned.

"Further answering this Defendant specifically denies that the Plaintiff was prevented from continuing his occupation as insurance agent as alleged in his Petition, and states the fact to be that prior to the said October 13, 1932, Plaintiff's license as an insurance agent and/or broker was revoked by the Insurance Department of the State of Missouri for cause.

"Further answering this Defendant specifically denies that by reason of the premises in Plaintiff's Petition set forth that he was greatly injured in his good name, fame and reputation.

"Further answering this Defendant denies each and every other allegation in Plaintiff's Petition contained.

"Wherefore, having fully answered, this Defendant prays to go hence with his costs in this behalf expended."

Separate answer of Defendant, Associated Underwriters, Inc., a corporation, attorney-in-fact for Chicago Lloyds, filed in said cause in said Court on the 17th day of March, 1941. Robert A. Roessel appears as the attorney for said defendant.

Separate answer of Defendant, Associated Underwriters, Inc., a corporation, was filed in said cause in said Court on the 17th day of March, 1941. Robert A. Roessel appears as the attorney for said defendant.

Claimant's Exhibit 1—form of Power of Attorney of individual underwriters to Associated Underwriters, Inc., in effect at Chicago Lloyds prior to April 1, 1937. (Being the [fol. 89] same document as that attached as Exhibit "B" (Rec. 52) to the Petition filed in the Superior Court of Cook County on June 24, 1938) as follows:

Recites that undersigned is desirous of becoming an insurer and underwriter in accordance with the provisions hereof, but not otherwise, against loss or damage resulting from those causes and/or hazards against which it may be lawful for the undesigned to insure under the laws of the State of Illinois and/or of such other States, Territories, Districts, and/or countries in which the insured risks are located.

Further recites that the undersigned desires to write such insurance as one of an aggregation of individuals with separate and several liability as between themselves, and as between each of them and any person, firm, association, or corporation insured in accordance herewith.

Recites that the undersigned has agreed to pay to Associated Underwriters, Inc., the attorney-in-fact herinafter mentioned, the sum of $250.00 for each $1000.00 of securities deposited hereunder as and for full payment and satisfaction of all services rendered and costs or expenses incurred or sustained by said Attorney in connection with the inception and development of the plan for writing insurance, not including, however, commissions hereafter to be paid to said attorney for procuring applications from persons, firms or corporations, for the issuance to them of policies of insurance as herein provided, * * *.

Recites that Associated Underwriters, Inc., a corporation of Illinois, has agreed to act as agent and attorney-in-fact, [fol. 90] for the undersigned, and for any other persons constituting from time to time, such aggregation of individuals.

Recites that the undersinged desires to have all such policies of insurance as may be issued by said attorney, as agent for the undersigned as an underwriter and for the other underwriters thereto, issued under the name, designation or style of Chicago Lloyds.

Appoints Associated Underwriters, Inc. his true and lawful attorney for him and in his name, place and stead to insure persons, firms, associations and corporations against loss or damage from any one or more of the hazards and/or causes against which it may be lawful for the undersigned to insure under the laws of the State of Illinois, or of such other state * * * upon such terms and at such rates of premium as such Attorney may from time to time deem proper * * * to collect and sue, in its own name, for any and all premiums and other moneys which may at any time become due and owing to the undersigned, or in which the undersinged may have any interest by reason of any contract of insurance * * * to be sued in its own name and as for its own liability, for any cause of action accruing in favor of any insured by reason of the issuance thereto of any policy or policies of insurance pursuant hereto; to adjust, settle and compromise each and every loss, claim, or demand that shall arise or accrue under such policy, and

to pay the undersigned's proportionate part of the same out of any money, securities or other thing of value belonging to the undersigned and being in the possession or custody of said attorney or deposited in trust with a Trustee as [fol. 91] herein provided; * * * to receive and admit service of process in any suit at law or equity, brought upon or by reason of the issuance of any such policy, and to cause an appearance to be made on behalf of the undersigned in any such suit; to employ counsel and to defend, compromise, adjust, or settle any such suit, and to enter into any admissions, agreements, or arrangements with the parties bringing such suits, with respect to the undersigned's liability to make payments on any such policy * * * as shall in the judgment of said attorney be expedient; to file any reports, statements, applications or other writings required by the laws, or regulations of any state, * * * or by the Insurance Department thereof; to make, constitute and appoint * * * the Insurance Commissioner or Insurance Superintendent of any other State, or of any other country, as may be required by the statutes of such state, or country respectively, the true and lawful attorney of the undersigned in and for such other state or country, as the case may be, on whom all legal process against the undersigned, as an underwriter upon any such policy of insurance, or by reason of the execution of this power of attorney, may be served in any action or proceeding, subject to and in accordance with all of the provisions and the statutes and laws of Illinois or such other state or country, as are now in force, or as may hereafter be adopted; and any service of any such process from any court so served on said attorney, shall be valid service on the undersigned.

The forgoing powers and each and all of them, and each and all of the other powers and authority herein contained or hereby granted, are given and granted expressly subject [fol. 92] to each and all of the following stipulations, agreements and conditions, namely: * * *

Ninth: Provides for the deposit of certain securities with the Trustee in accordance with the terms of said agreement.

Tenth: Said trust deposit is made by the undersigned upon the terms, provisions and trusts which are hereinafter set forth.

Eleventh: The principal of said deposit shall be used (in the event that funds of the undersigned in the hands of said attorney shall be inadequate to pay losses) to enable said attorney in fact to pay therefrom, or from the proceeds of the sale thereof, the undersigned's proportionate amounts of liability accruing upon claims for loss or damage sustained by any insured to whom policies of insurance shall hereafter be issued in accordance herewith. But the liability of the undersigned to replenish or maintain said funds or securities shall be limited to depreciation thereof and shall not include any liability to replace funds or securities used to pay losses sustained by reason of insurance written pursuant hereto.

Twelfth: Provides for title to said securities to be vested in the Trustee subject to the provisions of this Power of Attorney.

Sixteenth: Upon the termination of this power of attorney, by revocation, death or legal disability, and after the satisfaction, payment or release of the undersigned of and from all liability upon any policies of insurance previously issued, pursuant hereto, and upon payment of the proportionate part of the Trustee's fees and charges, [fol. 93] the said funds or securities so deposited shall be re-delivered to the undersigned, or his legal representatives. • • •

Eighteenth: For the sole purpose of procuring funds with which to pay the undersigned's proportionate part of claims for losses sustained upon policies of insurance issued pursuant hereto (in the event that funds of the undersigned in the hands of said attorney shall be inadequate to pay losses) the said attorney is hereby given power and authority to borrow against said deposited securities, upon the security thereof, to the extent of the amount of such proportionate part of such losses, and to encumber or to pledge said deposited securities with the lender. Such loans may be made by the Trustee or Trustees holding such securities pursuant hereto. • • •

Thirty-second: This power of attorney is executed by the undersigned and accepted by said attorney in the State of Illinois, and shall be subject to and construed with reference and according to the laws of the said State of Illinois.

Claimant's Exhibit 5. Certificate of the Superintendent of Insurance of the State of Missouri certifying that the annexed page is a true and correct photostatic copy of the original Power of Attorney appointing the Superintendent of Insurance of the State of Missouri agent to receive service of process for Chicago Lloyds Underwriters, Chicago, Illinois, executed February 28, 1927.

Attached to the foregoing certificate (our page 315) is a purported Power of Attorney which provides as follows: That Robert E. Kenyon, President of the Associated [fol. 94] Underwriters, Inc., attorney-in-fact for Chicago Lloyds Underwriters, being legally authorized thereto by every member of Chicago Lloyds Underwriters, does appoint Ben C. Hyde, Superintendent of the Insurance Department of the State of Missouri, and his successors in office, the true and lawful attorney in and for the State of Missouri upon whom all process against Chicago Lloyds Underwriters, its attorney-in-fact or its policyholders may be served in any action or special proceeding against Chicago Lloyds Underwriters, its attorney-in-fact or policyholders in the State of Missouri, subject to and in accordance with all the provisions of the Statutes and laws of the State of Missouri now in force, and such amendments thereto as may hereinafter be made. And said Attorney is hereby authorized and empowered as my agent and as the agent of Chicago Lloyds Underwriters, its attorney-in-fact or its subscribers, to receive and accept service for and in behalf of the said Chicago Lloyds Underwriters, its attorney-in-fact or its subscribers, in all the actions mentioned above; and service of process upon, or acceptance of service of process by said attorney shall be valid and binding, and be deemed personal service upon said Chicago Lloyds Underwriters, its attorney-in-fact or its subscribers; and this authority of said attorney shall continue in force so long as said Chicago Lloyds Underwriters, its attorney-in-fact, or its subscribers shall have any contracts or liabilities outstanding in the State of Missouri.

The witnessing clause recites that Robert E. Kenyon had affixed his hand and seal to said document at Chicago, Illinois, on the 28th day of February, 1927. The blank [fol. 95] for signature is vacant, but there appears on the

margin of said document, in handwriting, the following: "The original exhibit shows the words *Robert R. Kenyon*, which are underlined, as his signature."

Certificate of Notary certifying that Robert E. Kenyon appeared before him and subscribed and acknowledged the foregoing instrument as his free and voluntary act.

Liquidator's Exhibit 1.

"BUREAU OF LIQUIDATIONS, CONSERVATIONS AND REHABILITATIONS

175 West Jackson Blvd.

Chicago, Illinois.

State of Illinois
Department of
Insurance

Telephone
Harrison 9191

Ernest Palmer,
Director of Insurance
H. B. Hersey
In charge of Bureau
F. J. Bartsch
Special Deputy

To the Policyholders, Creditors and all other persons interested in the affairs of CHICAGO LLOYDS:

NOTICE IS HEREBY GIVEN:

1. That the undersigned, Ernest Palmer, as Director of Insurance of the State of Illinois, has been directed by an order of the Superior Court of Cook County, Illinois, entered on the 9th day of February, 1938, to take possession of the property and to liquidate the business and affairs of Chicago Lloyds pursuant to the Insurance Code of the State of Illinois. The undersigned has appointed F. J. Bartsch, Special Deputy, as his agent to liquidate [fol. 96] the business of said Chicago Lloyds and all communications and all transactions relating thereto should be addressed to and had with said F. J. Bartsch, Special Deputy, at his office located at 175 West Jackson Boulevard, Chicago, Illinois.

2. In accordance with the aforesaid order of Court, the Chicago Lloyds has been adjudged insolvent and all insurance policies and contracts of said Chicago Lloyds are terminated, and the rights and liabilities of all persons

under insurance or other contracts are fixed, as of 12 o'clock noon Central Standard Time, February 15th, 1938, pursuant to the Insurance Code of the State of Illinois.

3. All persons indebted to the said Chicago Lloyds or having any of its property in their possession are required forthwith to render an accounting of such debts and to pay the same and deliver such property to F. J. Bartsch, Special Deputy.

4. Pursuant to the further order of said Court, all persons, firms and corporations having any accounts, debts, claims or demands against said Chicago Lloyds or claiming any interest in any funds or property in the hands of the Liquidator, are required to file verified proof of their claims with F. J. Bartsch, Special Deputy, at his office, 175 West Jackson Boulevard, Chicago, Illinois, on or before November 15th, 1938.

FINAL DATE SET BY COURT FOR FILING OF CLAIMS IS NOVEMBER 15TH, 1938.

5. Liabilities will be determined as to all claims duly presented and all assets distributed without further notice. Persons who fail to comply with the directions herein contained will not share in such distribution of assets.

Dated, Chicago, Illinois, February 15th, 1938.

Ernest Palmer, Director of Insurance of the State of Illinois, as Liquidator of Chicago Lloyds.

[fol. 97] All communications regarding Chicago Lloyds should be addressed to:

F. J. Bartsch, Special Deputy,
175 West Jackson Blvd.,
Chicago, Illinois.

Co. Claim No. .....
Policy No. .....

LIQUIDATOR'S EXHIBIT 1.

People
vs.
Chicago Lloyds

Gen. No. 38 S 1022
Llewellyn A. Wescott
Master in Chancery
Superior Court, Cook County

To .....
.....
.....

Proof of Claim Blank is enclosed herewith."

FERRE C. WATKINS,
General Counsel, Department of Insurance, State of Illinois.
GLENN, REAL & BROWNING,
Attorneys for Appellee, N. P. Parkinson, Acting Director of Insurance of the State of Illinois.

[fol. 98] And, on the same day, to-wit: on the 25th day of April, A. D. 1945, there was filed by appellee, N. P. Parkinson, Acting Director of Insurance of the State of Illinois, Statement, Brief and Argument, pages six to eleven incorporated therein, being in the words and figures, following to-wit:

[fol. 99] IN SUPREME COURT OF ILLINOIS

POINTS AND AUTHORITIES

I

The Judgment of Appellant Is Void for the Reason That It Was Taken Against a Non-existent Statutory Entity, Chicago Lloyds

A judicial decree terminating the right of a company to continue in business is equivalent to a dissolution order, and judgments subsequently taken against the company are void.

Blanchard Bros. & Lane v. *Gay Co.*, 289 Ill. 413.
People v. *Marquette National Fire Ins. Co.*, 267 Ill. App. 478.
In re National Surety Co., 283 N. Y. 68; 27 N. E. (2nd) 505 (Cert. denied 311 U. S. 707).
Pendleton v. *Russell*, 144 U. S. 640; 36 L. Ed. 574.
First National Bank of Selma v. *Colby*, 88 U. S. 609; 22 L. Ed. 687.

Chicago Lloyds was an unincorporated insurance company authorized by a certificate of authority to transact

business. Certificates of authority to conduct business were issued by the Director of Insurance annually and expired on the 30th day of June following their issuance.

Par. 699, Chap. 73, *Illinois Revised Statutes* 1943.

The final certificate of authority issued to Chicago Lloyds expired on June 30, 1938, following the date of the order of liquidation. Chicago Lloyds ceased to be a statutory [fol. 100] entity either on the date of the liquidation order, or on June 30, 1938, when its certificate of authority expired. A judgment subsequently taken against it is void.

Pars. 699, 800, 801, 802, Chap. 73, *Illinois Revised Statutes* 1943.
Blanchard Bros. & Lane v. *Gay Co.*, 289 Ill. 413.
In re National Surety Co., 283 N. Y. 68; 27 N. E. (2nd) 505 (Cert. denied 311 U. S. 707).
Pendleton v. *Russell*, 144 U. S. 640; 36 L. Ed. 574.

A judgment taken against a dissolved corporation is a nullity, and is not provable against the receiver or liquidator in the court having jurisdiction of the cause.

Evans v. *Illinois Surety Co.*, 319 Ill. 105.
Pendleton v. *Russell*, 144 U. S. 640; 36 L. Ed. 574.
Oklahoma Natural Gas Co. v. *Oklahoma*, 273 U. S. 257; 71 L. Ed 634.

In the absence of a statute preserving the right to maintain actions against dissolved corporations, all actions abate against a corporation upon its dissolution. In like manner, actions against an individual abate upon his death.

Pendleton v. *Russell*, 144 U. S. 640; 36 L. Ed. 574.
Okla. Natural Gas Co. v. *Oklahoma*, 273 U. S. 257; 71 L. Ed. 634.
In re National Surety Co., 283 N. Y. 68; 27 N. E. (2nd) 505 (Cert. denied 311 U. S. 707).

[fol. 101]

II

The Liquidation Proceeding Involved Herein Was a Statutory Liquidation, and the Judgment of Appellant Taken Subsequent to the Date of the Order of Liquidation is Not Provable In This Proceeding

The liquidation proceedings of Chicago Lloyds was a statutory liquidation of an insolvent insurance company under Article XIII of the Insurance Code of 1937, paragraph 799, *et seq.*, chapter 73, *Illinois Revised Statutes of* 1943.

A. Under Paragraph 803 of Chapter 73, the Liquidator is vested with title to all property, contracts and rights of action of the company as of the date of the liquidation order.

B. Paragraph 806, Chapter 73, provides that the rights of all creditors shall be fixed as of the date of the order of liquidation unless otherwise ordered, and that order provided such rights were fixed as of noon on February 15, 1938 (Abs. 5).

C. Paragraph 801, Chapter 73, provides for the issuance of an injunction "to prevent waste of assets or the obtaining of preferences, judgments, attachments or other like liens," and such an injunction was issued (Abst. 6).

When a state has adopted a policy governing the liquidation of insurance companies, that policy is binding upon creditors wherever they may be located. A judgment taken against the insolvent subsequent to the date of the entry of the liquidation order is not entitled to recognition in the liquidation proceeding.

Evans v. *Illinois Surety Co.*, 319 Ill. 105.

Alaska Packers Assn. v. *Industrial Acc. Com.*, 294 U. S. 532; 79 L. Ed. 1044.

[fol. 102] *Pacific Employers Insurance Company* v. *Industrial Acc. Com.*, 306 U. S. 493; 83 L. Ed. 940.

See also:

Clark v. *Williard*, 294 U. S. 211; 79 L. Ed. 865.
Bradford Electric Light Co. v. *Clapper*, 286 U. S. 145; 76 L. Ed. 1026.

All parties, whether policyholders or creditors, dealing with an Illinois insurance company have presumptive knowledge of its charter provisions and the statutory law governing its liquidation.

People v. *Niehaus*, 356 Ill. 104.
Relf v. *Rundle*, 103 U. S. 222; 26 L. Ed. 337.
Clark v. *Williard*, 292 U. S. 112; 78 L. Ed. 1160.

The laws of Illinois governing the liquidation of insurance companies and judicial proceedings thereunder are entitled to full faith and credit in the courts of sister states.

Converse v. *Hamilton*, 224 U. S. 243; 56 L. Ed. 749.
Hirson v. *United Stores Corporation*, 34 N. Y. S. (2nd) 122.
Wulf v. *Roseville Trust Co.*, 164 App. Div. 399; 149 N. Y. S. 683.

A corporation carries with it all charter provisions governing it into each state in which it carries on business, and all parties doing business with it are presumed to know the law governing it and are bound thereby.

Relf v. *Rundle*, 103 U. S. 222; 26 L. Ed. 337.
Pendleton v. *Russell*, 144 U. S. 640; 36 L. Ed. 574.
Clark v. *Williard*, 292 U. S. 112; 78 L. Ed. 1160.

[fol. 103] A. This rule is recognized in the courts of Missouri as applicable to statutory liquidation proceedings in which title to all assets of insolvent is vested in Superintendent of Insurance upon the entry of a liquidation order.

McDonald v. *Pacific States Life Ins. Co.*, 343 Mo. 1232; 124 S. W. (2nd) 1157.
State ex rel. McKittrick v. *Fidelity Assur. Assn.*, 344 Mo. 1; 179 S. W. (2nd) 67.
Pensinger v. *Pacific States Life Ins. Co.*, 25 Fed. Sup. (Mo.) 295.

B. The general rule in a statutory liquidation proceedings wherein a statutory liquidator is vested with title is that judgments taken against the insolvent company, subsequent to the liquidation order, are not provable in the liquidation proceedings.

Martyne v. *American Union Fire Ins. Co.*, 216 N. Y. 183; 110 N. E. 502.
In re National Surety Co., 283 N. Y. 68; 27 N. E. (2nd) 505 (Cert. denied 311 U. S. 707).

U. S. Truck Co. v. *Penn Surety Corp.*, 259 Mich. 422; 243 N. W. 311.

Shreve Chair Co. v. *Mfgs. Fur. Co.*, 271 S. W. (Ark.) 954.

See also:

O'Malley v. *Wilson*, 182 Ga. 97; 185 S. E. 109.

Harrison v. *Missouri State Life Ins. Co.*, 177 Okla. 377; 59 Pac. (2nd) 774.

Parsons v. *Charter Oak Life Ins. Co.*, 31 Fed. (Iowa) 305.

Bockover v. *Life Association of America*, 77 Va. 85.

Gilman v. *Ketcham*, 84 Wis. 60; 54 N. W. 395; 23 L. R. A. 52.

[fols. 104-105] C. Under the decisions of the Missouri Courts, the judgment in the instant case is invalid and not provable against the liquidator.

McDonald v. *Pacific States Life Ins. Co.*, 343 Mo. 1232; 124 S. W. (2nd) 1157.

Pensinger v. *Pacific States Life Ins. Co.*, 25 Fed. Sup. (Mo.) 295.

State ex rel. McKittrick v. *Fidelity Assur. Assn.*, 344 Mo. 1; 179 S. W. (2nd) 67.

The full faith and credit clause of the Federal Constitution has no application to a void judgment of a sister state.

Evans v. *Illinois Surety Co.*, 319 Ill. 105.

Pendleton v. *Russell*, 144 U. S. 640; 36 L. Ed. 574.

In re National Surety Co., 283 N. Y. 68; 27 N. E. (2nd) 505 (Cert. denied *Laughlin Admr.* v. *Pink, Supt. of Ins.*, 311 U. S. 707; 85 L. Ed. 459).

See also:

McDonald v. *Pacific States Life Ins. Co.*, 343 Mo. 1232; 124 S. W. (2nd) 1157.

Pensinger v. *Pacific States Life Ins. Co.*, 25 Fed. Sup. (Mo.) 295.

State ex rel. McKittrick v. *Fidelity Assur. Assn.*, 344 Mo. 1; 179 S. W. (2nd) 67.

Judgments taken against an insolvent insurance company, subsequent to the order of dissolution, are subject to collateral attack in the liquidation proceedings.

Evans v. *Illinois Surety Co.*, 319 Ill. 105.
Pendleton v. *Russell*, 144 U. S. 640; 36 L. Ed. 574.
In re National Surety Co. (*Cosby Motor Co.*), 22 N. Y. S. (2nd) 250.

[fol. 106] IN SUPREME COURT OF ILLINOIS

REPLY BRIEF OF APPELLANT—Filed May 12, 1945

* * * * * * *

He then refers to several sections of Article XIII of the Code which do not relate to the filing, proof and allowance of claims (Brief, pp. 27-28), but he does not refer to the sections which do. He asserts that the "Statute provides for a judicial hearing of contested claims" (Brief, p. 28), but he does not mention the section to which he refers and we have not found such a provision.

He relies principally upon Section 191 of the Code (Ill. Rev. Stat., Chap. 73, Sec. 803), which provides that title to the property of a company in liquidation is vested in the Director. (Brief, p. 28) Cases involving corporations are cited for the proposition that the title vested in the Director is recognized in other jurisdictions. The reasoning upon which the decisions in those cases rests is that a State, which has created a corporation, may say who the agents of that corporation are to be in case its charter is forfeited. (See quotation from *Relfe* v. *Rundle*, on pages 32 and 33 of the brief of appellee.) That reasoning is not applicable to associations which are not created by a State. Chicago Lloyds received no charter from the State of Illinois. (*Roach & Co.* v. *Harding*, 348 Ill. 454, 464; 7 C. J. S. "Associations" 19, 21.) It was formed by act of its members, many of whom are residents of States other than Illinois, (Claimants' Exs. Nos. 15 and 16) It transacted business in Illinois. It also transacted business in Missouri, and it may have done so in other States. If an association owns property located in more than one State, which of the States has the power of designating the "agent" (if he can be

called an agent of the association) to liquidate all its property wherever located? A corporation, which is created by the laws of one of the States, carries its charter and the laws of the State of its creation governing it into other States in which it transacts business, and so the State of incorporation may designate the liquidating agent. An association has no charter to carry. Chicago Lloyds has no charter into which Section 191 of the Code can be read. Consequently, the theory whereunder a statutory liquidator [fol. 107] of a corporation succeeds to the title to its property located in another State does not apply to an association.

But, for purposes of argument, we shall assume that the Director of Insurance of the State of Illinois succeeds to, and becomes vested with, title to all the property of the association which he has been ordered to liquidate. His title is merely that of a trustee or quasi-trustee for the purpose of distributing the assets of the company among its creditors and others entitled to it. (*Relfe* v. *Rundle* (Brief of appellee, p. 32).) It does not follow, as a consequence of the vesting of title in him, as trustee, that creditors can not obtain, in competent courts of sister States, judgments *in personam* against the company, or that such judgments are not entitled to full faith and credit pursuant to the command of the Federal Constitution. That result does not follow even in the case of a corporation. The authorities, which the Director has cited, involved corporations, not associations, and in those cases where it was held that a judgment against a corporation, rendered after it was dissolved, will not be allowed as a claim, the reason given for disallowance was that a judgment against a dissolved corporation is void, not that the liquidator was vested with title to the property of the company.

The next point made by the Director is that the claimant in this case must be presumed to know the law governing Lloyds associations and "that any claim he might have would be *dealt with* in accordance with the provisions of the Statutes of Illinois governing the liquidation of this company." (Brief, p. 34) It may be that a person dealing with a *corporation* is charged with notice and impliedly agrees that if the corporation is dissolved under the laws of the State of its creation, the statutory receiver will represent the corporation in any suit which the person dealing with the corporation may institute affecting the winding up of the

[fol. 108] affairs of the corporation. (*Relfe* v. *Rundle*, 103 U. S. 222, 225) It may be, in the absence of a contrary local policy, that a person dealing with a *corporation* is charged with notice and impliedly agrees that if the corporation is dissolved under the laws of the State of its creation, he will not be permitted to reach its property located in another State. Those consequences may follow from the theory that a corporation carries its charter and the laws of the State of its creation into every State in which it does business. They do not apply in the case of an association which has received no charter from a State.

However, we shall assume for argument that these consequences do apply to associations and that the statutory liquidator of an association, like a statutory liquidator of a corporation will represent it in any suit which may be instituted against it and that persons dealing with the association will not be permitted to reach its property located in another State. It does not follow that claims may not be liquidated in sister States, especially in States where the claimant resided and where the association did business and where the cause of action arose. The Director may represent the association in such actions against the association. The Director may resist the seizure of property, title to which is vested in him by the statute. But, claims may nevertheless be liquidated in competent courts. The cases cited by the Director hold only (1) that creditors will not be permitted to *reach property*, title to which has passed to the liquidator, and even this rule is subject to an exception (*Clark* v. *Williard*, 294 U. S. 211); or (2) that judgments rendered against a corporation after it has been dissolved are void. In *Relfe* v. *Rundal*, the liquidator did not contend that the action there was abated or that it could not be maintained in a sister State. He contended only that he had the right to remove the case to a Federal court.

[fol. 109] There is another fatal weakness in this point. Although the Director argues that the claimant must be presumed to know the law governing Lloyds associations and "that any claim he might have would be *dealt with* in accordance with the provisions of the statute of Illinois governing the liquidation of this company," he has not pointed to any provisions of the Code according to which claims of creditors are to be "dealt with." He has not shown that there is any provision in the Code which pur-

ports to prohibit the liquidation of claims in sister States or to confer exclusive jurisdiction to liquidate claims upon the supervising court. Later, in this reply, we shall refer to the provisions of the Code which relate to the filing, proof and allowance of claims.

From these two propositions the Director concludes that the claimant "could not obtain a judgment in a foreign State which would be valid against the Director of Insurance of the State of Illinois, as Liquidator of Chicago Lloyds." (Brief, p. 35) Just how this conclusion follows from the propositions that the Director is vested with title to the property of Chicago Lloyds and that a claimant is presumed to know that his claim would be "dealt with" in accordance with the provisions of the Code is not clear.

At this point in his argument the Director has injected a new contention, not against the provability of the judgment, but against its validity. He argues that the judgment is invalid because the laws of Illinois are entitled to full faith and credit in Missouri and that under the full faith and credit clause the Missouri court "should have refused to enter judgment against Chicago Lloyds." (Brief, p. 35) He forgets that, but a few pages before, he argued that a State is not required to give faith and credit to the statutes of sister States. (Brief, pp. 19-26) Surely, the courts of one State are not to be ousted of their jurisdiction by legisla-
[fol. 110] tion of another, that the point might have been urged that the proceedings were not in conformity with the statute, but the point does not seem to have been made. The Director's statement that an injunction was issued in the *Evans* case is erroneous. (Brief, p. 51)

Summarizing, briefly, the answers to the Director's principal contentions:

I

A. Chicago Lloyds continued to remain capable of being sued despite the entry of the order that the Director take possession of and liquidate its property and a judgment rendered after the entry of such an order is not void.

B. Chicago Lloyds continued to remain capable of being sued after its certificate of authority to transact business in Illinois expired, even assuming that that certificate was not renewed.

C. Illinois is required to give full faith and credit to the Missouri judgment.

II

The fact that the liquidation proceeding here is statutory does not confer exclusive jurisdiction to liquidate claims upon the supervising court or warrant that court in disallowing claims on judgments rendered by competent courts of sister States after the entry of the order of liquidation, where the company is an association which has not been dissolved.

[fol. 111] A. Assuming that the Director of Insurance of the State of Illinois became vested with title to all property of Chicago Lloyds, it does not follow, as an incident of that title that claims against it may not be liquidated in competent Courts of sister States.

B. Assuming that the claimant is presumed to know that any claim he might have against Chicago Lloyds would be "dealt with" in accordance with the provisions of the statutes of Illinois, it does not follow that claims against Chicago Lloyds may not be liquidated in competent courts of sister States.

We regret that we have not had enough time to file a shorter reply.

Respectfully submitted, J. L. London, Ford W. Thompson and Tannenbaum, Polikoff & Schmidt, Attorneys for Appellant.

[fols. 112-113] In Supreme Court of Illinois

(Title Omitted)

Order of Submission—May 22, 1945

Now on this day come the parties hereto and this being one of the days set apart for the call of the docket under the rules of this Court, and it appearing to the Court that appellant hath filed herein a duly certified transcript of the record and proceedings of the Court below, together with printed abstracts thereof, and briefs and arguments of counsel in support of the errors assigned herein, and

entered motion to reverse the judgment and remand said cause and for costs, and the said appellee having entered motion to affirm said judgment and for costs and procedendo, and said motions being taken under advisement for final hearing, and the Clerk of this Court reporting that said cause is now ready to be taken, and said cause having been argued orally by Julius A. Polikoff for appellant and Raymond G. Real for appellee is here submitted for the consideration and judgment of the Court:

Therefore it is ordered by the Court that this cause be and the same is hereby taken under advisement.

[fol. 114] IN SUPREME COURT OF ILLINOIS

(No. 28664.—Order affirmed.)

THE PEOPLE ex rel. PAUL F. JONES, Director of Insurance, Appellee,

vs.

CHICAGO LLOYDS *et al.*—(CHARLES B. MORRIS, Appellant)

OPINION FILED SEPTEMBER 19, 1945—Rehearing denied November 19, 1945

MR. JUSTICE GUNN delivered the opinion of the court:

The controversy in this case arises out of the disallowance of a claim of Charles B. Morris, appellant, by the Director of Insurance of Illinois, the liquidator of Chicago Lloyds, hereinafter referred to as "liquidator," appointed by the decree of the superior court of Cook county upon the petition of the Director of Insurance and the Attorney General of the State of Illinois.

As finally amended appellant's claim consists of a judgment rendered in the circuit court of the City of St. Louis, Missouri, against Chicago Lloyds, three years after the liquidator of Chicago Lloyds had been confirmed by the decree of the superior court. The claimant contended the full-faith-and-credit clause of the constitution of the United States (art. IV, sec. 1,) and the acts of Congress enacted pursuant thereto, required that such judgment be recognized in the Illinois liquidation proceeding and allowed as a claim against the assets of Chicago Lloyds for the full amount of such judgment.

Appellant's claim involves a construction of the constitution of the United States, and authorizes a direct appeal to this court. *Groome* v. *Freyn Engineering Co.* 374 Ill. 113; *VanDyke* v. *Illinois Commercial Men's Ass'n*, 358 Ill. 458.

Many of the questions arising under this provision of the United States constitution have been so thoroughly settled that as to such questions an appeal to this court would not be entertained, because the question involved is no longer debatable, and we do not entertain appeals when the constitutional question is settled so as to be no longer debatable. *First Nat. Bank* v. *Village of South Pekin*, 371 Ill. 605; *Dean* v. *Board of Education*, 386 Ill. 156; *Wilson* v. *Prochnow*, 354 Ill. 98.

The question here presented, as set out in the report of the master, is as follows: "Had the liquidator of an insurance company, organized and doing business under the laws of Illinois, or the court appointing him, the right to pass upon the merits or the amount of a claim, arising out of a suit instituted in another forum before the appointment of the liquidator and consummated by a judgment of such foreign court after such appointment?" This presents a new application of the full-faith-and-credit clause, which is still debatable, or at least questionable, and therefore is subject to review by this court on direct appeal from the superior court of Cook county. (*Atkins* v. *Atkins*, 386 Ill. 345.) Incidentally the question is also in the case under such clause of the constitution as to what effect the prior decree of the Illinois court, appointing a liquidator for Chicago Lloyds, has upon a subsequent judgment rendered in another State seeking satisfaction from the same assets. [fol. 115]. These questions, as presented, we believe have never been decided by the United States Supreme Court as the final arbiter of such questions arising under the full-faith-and-credit clause.

The facts as applicable to the questions involved are comparatively simple. Chicago Lloyds, an unincorporated association recognized and authorized by the laws of Illinois to transact insurance business in Illinois, and in other States, upon compliance with the laws of such other States, obtained a license to transact business in the State of Missouri March 1, 1932, and continued to have such authority for some years thereafter. Associated Underwriters, Inc., was the attorney in fact for Chicago Lloyds in said State,

and one Roessel was attorney for Chicago Lloyds, and its agent. The claimant, Charles B. Morris, became the agent handling such business in Missouri, under a contract. A dispute arose as to whether he had accounted for all premiums paid to him, which resulted in his being arrested upon the complaint of Roessel, charged with embezzlement, and was indicted, tried and acquitted.

August 24, 1934, Morris brought suit in the circuit court of the city of St. Louis against Chicago Lloyds, Associated Underwriters, Inc., and attorney Roessel, for malicious prosecution and false arrest. The cause was removed to the United States court, and afterwards, January 7, 1938, remanded to the circuit court of the city of St. Louis. February 9, 1938, the People of the State of Illinois, upon the relation of the Director of Insurance, filed in the superior court of Cook county a petition praying for the entry of an order finding sufficient cause existed for the liquidation of Chicago Lloyds, and on the same day a decree was entered adjudging and decreeing that the Director of Insurance take possession of its property, and liquidate the same in accordance with the Illinois Insurance Code. February 15, 1938, an order fixing the time and procedure for [folio. 116] the filing of claims was made, requiring claims to be presented to the liquidator on or before November 15, 1938.

Before the liquidation proceeding Chicago Lloyds had questioned the jurisdiction of the circuit court of the city of St. Louis by a plea and demurrer which were overruled, and later filed an answer on the merits, as did also Associated Underwriters, Inc. After the order of the superior court of Cook county appointing a liquidator was entered, an injunction was issued restraining the claimant and others from prosecuting claims, (of which claimant concedes he had notice,) and counsel for Chicago Lloyds, upon the requirement of the liquidator, withdrew, and the St. Louis court was advised that the reason of such action was the liquidation proceedings in Illinois, with the consequent vesting of the title to all of the property and assets of Chicago Lloyds in the liquidator. Nevertheless, the claimant persisted in prosecuting his suit at law in the circuit court of the city of St. Louis, and April 7, 1941, such court entered a judgment in favor of the claimant against Chicago Lloyds and others in the amount of $50,000.

September 21, 1938, before obtaining judgment Morris filed his claim with the liquidator in the amount of $100,000, claiming damages for false imprisonment and malicious prosecution, and attached as an exhibit the complaint filed in the circuit court of the city of St. Louis. After he had obtained judgment he amended his claim by filing an exemplified copy of the judgment rendered by the circuit court of the city of St. Louis. The amended claims shows it arose from the same state of facts as the original. The only evidence resented by claimant was the record of this judgment obtained in the circuit court of the city of St. Louis.

In disposing of the issues presented and argued in this case it is first necessary to examine the status, rights and title of the liquidator of the insolvent insurance company under the laws of the State of Illinois. Article XIII of [fol. 117] "An Act to revise the law relating to insurance," referred to as the Insurance Code, (Ill. Rev. Stat. 1943, chap. 73, pars. 799 *et seq.*,) among other things provides for the liquidation of insolvent insurance companies. Section 188 of the Insurance Code, (Ill. Rev. Stat. 1943, chap. 73, par. 800,) specifies the grounds upon which the Director of Insurance and the Attorney General may petition a circuit or superior court for an order to show cause why an insurance company should not be liquidated. Section 189, (par. 801), of the Insurance Code provides the court may issue an injunction to protect the assets of such insolvent company. Section 190, (par. 802,) provides upon full hearing, the court may enter an order either to dismiss the proceeding, or find cause exists, and order the Director of Insurance to take possession of the property, business, assets, and affairs of said insolvent insurance company, and liquidate them according to law. Section 191 (par. 803) provides that the Director, as liquidator, is vested by law with title to the property, contracts and rights of such insolvent insurance company, as of the date of the order entered by the court. Section 193, (par. 805,) fixes the duties of the liquidator. Section 194, (par. 806,) provides that creditors, except those holding contingent claims, shall, unless otherwise ordered by the court, be fixed as of the date of the entry of the order directing liquidation. Section 208, (par. 820,) directs the manner of fixing the time to file claims, after an order has been entered declaring the company insolvent. Section 209, subsection (3,)

(par. 821,) provides how and under what conditions a contingent claim may be allowed, with a limitation that the claim must become absolute against the company on or before the last day fixed for filing the proofs.

Under the provisions of a prior law, (Ill. Rev. Stat. 1935, chap. 73, par. 105 (4),) which is almost identical with section 191, we have held that the title of a liquidator of an insolvent insurance company is different from that of [fol. 118] a receiver in chancery, who is limited to the territorial jurisdiction of the court appointing him, but, on the contrary, vests in the liquidator the title to all of the property of an insolvent insurance company. *People ex rel. Palmer* v. *Niehaus*, 356 Ill. 104; *National Bondholders Corporation* v. *Joyce*, 258 N. Y. 257, 11 N. E. 2d 552.

The pioneer case making this distinction between the title of a liquidator appointed under a special statute, and that of a receiver, is *Relf* v. *Rundle*, 103 U. S. 222, 26 L. ed. 337, where the distinction between possession of a receiver and the title of a State officer, vested with title of assets of an insolvent corporation, was first discussed with like results. The title of such a liquidator reaches all of the assets of the company, including those in other States; (*Relfe* v. *Rundle*, 103 U. S. 222, 26 L. ed. 337; *Converse* v. *Hamilton*, 224 U. S. 243, 56 L. ed. 749;) and the title of such a liquidator must be recognized by the courts of other States. *Clark* v. *Williard*, 292 U. S. 112, 78 L. ed. 1160.

At least twenty States, including Missouri, have enacted statutes vesting title to the property of an insolvent corporation in the liquidator appointed to take charge of its property, and the Supreme Court of Missouri has given, to a statute similar to section 191, (Mo. Rev. Stat. 1929, sec. 5947,) the construction we have given in the *Niehaus case*. (*McDonald* v. *Pacific States Life Ins. Co.* 343 Mo. 1232, 124 S. W. 2d 1157.) In this case the title of a liquidator appointed in Colorado was held superior to a later judgment in Missouri, levied on Missouri real estate.

The title of such a liquidator has been compared to that of a trustee under a general deed of assignment. (*Clark* v. *Williard*, 292 U. S. 112, 78 L. ed. 1160.) But since insurance companies are excluded from the operation of the National Bankruptcy Act, and one of the objects of the Illinois act liquidating insolvent insurance companies is to secure ratable distribution of its assets, we see no

[fol. 119] reason why the statute vesting a liquidator with title should not receive the same construction as the Bankruptcy Act, which on adjudication of the bankrupt places title to all of the bankrupt's property, with actual or constructive possession, in a trustee, without regard to his location or place of adjudication. *Isaacs* v. *Hobbs Tie & Timber Co.* 282 U. S. 734, 75 L. ed. 645.

In view of the foregoing we hold that the Director of Insurance of the State of Illinois, as liquidator of Chicago Lloyds, upon the entry of the decree of the superior court of Cook county of February 9, 1938, became vested with the title to all of its property, wherever situated, and that the courts of other States are required to recognize the rights of such liquidator, established by the judgment or decree authorized by the Illinois statute for the liquidation of insolvent insurance companies.

Appellant claims that notwithstanding the property and assets of Chicago Lloyds vested in the liquidator, the full-faith-and-credit clause of the United States constitution, and the statutes enacted pursuant thereto, require the judgment rendered three years later, in the circuit court of the city of St. Louis, against Chicago Lloyds be allowed for the full amount, as a valid claim against the assets in possession of such liquidator.

If it be assumed appellant had the right to proceed to trial and judgment in the circuit court of the city of St. Louis after the liquidator had been appointed and had taken possession of all of the property of Chicago Lloyds, still, if such judgment be allowed full faith and credit by the courts of Illinois, it does not necessarily mean such judgment is entitled to be collected out of the assets of Chicago Lloyds.

The construction and interpretation of the full-faith-and-credit clause has been the subject of much controversy and difficulty, and in some cases reaching results which are apparently contradictory. No rule can be laid down which [fol. 120] will fit all cases. In the simple instance of a judgment for debt against a person or corporation, where collection is sought in another State, with no complications involving insolvency, conflict of law, questions of jurisdiction, or offending State policies, little difficulty is had in applying the case of *Mills* v. *Duryee*, 7 Cranch, 481, 3 L. ed. 411, that a judgment have the same faith and credit in another State that it had in the State of its rendition. This

case was decided in 1813, but since that time the United States Supreme Court has held there were exceptions to the rule first announced, because of the complex nature of the Federal union and the necessity of preserving the sovereignty and policies of the several States by refraining from imposing upon them the laws of another State under the guise of the full-faith-and-credit clause.

From the cases a general pattern may be discovered controlling the several different classes of cases in which full faith is required, and those which are regarded as exceptions to the rule. Upon examination we find that the application of the full-faith-and-credit clause is particularly favored when applied to the enforcement of judgments of another State, as distinguished from statutes and other public acts. (*Williams* v. *North Carolina*, 317 U. S. 287, 87 L. ed. 279.) Doubtless because this provision is supposed to have been a part of the constitution to give effect to the general rule of *res judicata*. (*Magnolia Petroleum Corp.* v. *Hunt*, 320 U. S. 438, 88 L. ed. 149.) So when the same proposition of enforcing a judgment for money in one State is presented, and there is no question of exception to the rule arising, the rule of *Mills* v. *Duryee*, 7 Cranch, 481, 3 L. ed. 411, is easy to apply.

The first class of cases comprise those where full faith is required. In divorce matters the decree of another State is entitled to full faith and credit, where the jurisdiction of the trial court is not questioned. (*Williams* v. *North Carolina*, 317 U. S. 287, 87 L. ed. 279.) This is but an [fol. 121] application of the well-settled rule that when full faith and credit is sought the jurisdiction of the court rendering the judgment is always open to inquiry. (*Pendleton* v. *Russell*, 144 U. S. 640, 36 L. ed. 574.) So also, a judgment for money rendered in one State is enforcible in another although in the latter it would be regarded as a gambling debt and unenforcible. (*Fauntleroy* v. *Lum*, 210 U. S. 230, 52 L. ed. 1039.) In *Milwaukee Co.* v. *M. E. White Co.* 296 U. S. 268, 80 L. ed. 220, a judgment for taxes rendered in Wisconsin was enforced against the defendant in the State of Illinois. And in *Yarborough* v. *Yarborough*, 290 U. S. 202, 78 L. ed. 269, it is held that support money awarded a child by a decree of court in a divorce proceeding between the father and mother is not subject to being enlarged or increased in another State, where the decree is pleaded in bar, even though the child was not

a party to the proceeding. And similarly, the full-faith-and-credit clause applies to an unalterable decree of alimony of a divorced wife. (*Sistare* v. *Sistare*, 218 U. S. 1, 54 L. ed. 905). It is to be observed in all of the cases just cited there was a judgment or decree for money against the defendant, which was held binding in another State, whether urged for collection or defensive purposes.

A second class of cases, where full faith and credit have been denied, cover a wide field. It is a general rule that the courts of no country execute the penal laws of another; (*The Antelope*, 23 U. S. 10,) and, hence, full faith and credit has been denied a judgment for a penalty obtained by a State against an insurance company, (*State of Wisconsin* v. *Pelican Ins. Co.* 127 U. S. 265, 32 L. ed. 239) followed in *Huntington* v. *Attrill*, 146 U. S. 657, 36 L. ed. 1123, where the nature of the penalty is exhaustively treated. So, where the only remedy to collect an assessment against the stockholder of a corporation is at the suit of a *creditor*, denying full faith and credit to a judgment obtained by a receiver against a stockholder does not offend the constitution. [fol. 122] *Finney* v. *Guy*, 189 U. S. 335, 47 L. ed. 839.

Also, where the New York Code provided a foreign corporation could not maintain a suit unless the cause of action arose in the State, full faith and credit was not denied where the New York court refused to recognize an Illinois judgment in favor of a foreign corporation, where the action did not arise in the State of New York. *Anglo-American Provision Co.* v. *Davis Production Co.* 191 U. S. 373, 48 L. ed. 225.) The reason given is that the requirement that the action arise in New York goes to the jurisdiction of the New York court, and such jurisdiction is not afforded by the full-faith-and-credit clause. Likewise, a judgment against an insurance company on a policy, enforcible because the beneficiary has an insurable interest in the State where the contract is made, may not be enforcible in another State where the same interest of the beneficiary is held not to be an insurable one. *Griffin* v. *McCoach, Trustee*, 313 U. S. 498, 85 L. Ed. 1481.

The nature of a case as constituting a cause of action in the several States is not changed by the fact that it is reduced to judgment. (*Huntington* v. *Attrill*, 146 U. S. 657, 36 L. ed. 1123.) However, it must be observed that a State may not, under the guise of denying a remedy, refuse, under the full-faith-and-credit clause, claims otherwise capable

of being enforced in such other State. *Broderick* v. *Rosner*, 294 U. S. 629, 79 L. ed. 1100.

This second type of cases represents a class which, if originally brought in the State in which enforcement of the judgment is sought, could not have been maintained, and are therefore not made valid by a judgment elsewhere. Two of these cases, the *Finney* and *Anglo-American cases*, are to be distinguished from the first class above discussed only because jurisdiction is lacking to afford a remedy, and not because of a mere difference between the States as to what amounts to a cause of action.

[fol. 123] A third class of cases arises when the judgment or decree sought to be enforced will, if enforced, require the application of a different law to property, or the right to take property from that of the State in which it is sought to be enforced. So, the construction of a will involving real estate, (*Clarke* v. *Clarke*, 178 U. S. 186, 44 L. ed. 1028;) a judgment determining legitimacy of children, (*Olmsted* v. *Olmsted*, 216 U. S. 386, 54 L. ed. 530;) or the manner of adoption of children, (*Hood* v. *McGehee*, 237 U. S. 611, 59 L. ed. 1144;) or the capacity of a lunatic (*Gasquet* v. *Fenner*, 247 U. S. 16, 62 L. ed. 956;) and the interpretation of contracts, (*Pink* v. *A.A.A. Highway Express, Inc.* 314 U. S. 201, 86 L. ed. 152,) are all instances in which the judgment of one State is unenforcible in another State under the full-faith-and-credit clause, if opposed to the law of the latter.

In recent years there has been a trend towards yet another class of cases involving full faith. Where a party has an option to proceed under the laws of one of two or more States having similar laws, as in compensation cases, where the liability may be enforced either where the contract of employment is made, or where the injury occurs; and cases involving the liquidation of corporations, where they acquire title to the property by the judgment and laws of one State but have property in another which is subject to preferences which may be created by the State law of the latter. In *Pacific Employers Ins. Co.* v. *Industrial Accident Com. of Calif.* 306 U. S. 493, 83 L. ed. 940, it is said: "It has often been recognized by this Court that there are some limitations upon the extent to which a state may be required by the full faith and credit clause to enforce even the judgment of another state in contravention of its own statutes or policy. * * * The very

nature of the federal union of states, to which are reserved some of the attributes of sovereignty, precludes resort to the full faith and credit clause as the means for compelling [fol. 124] a state to substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate." Having this in mind the court held, in compensation cases, where each State had a compensation law, it would be lawful for a State to adopt or enforce the remedy of another, or follow its own. There an employee residing in Massachusetts, becoming employed in that State by a Massachusetts employer, and injured in the course of his employment in the State of California, was sustained in having compensation awarded under the California law.

In *Alaska Packers Ass'n* v. *Industrial Accident Com. of California*, 294 U. S. 532, 79 L. ed. 1044, an employee made his contract in the State of California, and by agreement with his employer to be transferred there and back, went to Alaska, where he was injured. Upon return to California he brought proceedings for compensation under the California law, which was allowed and sustained notwithstanding claim that the Alaska compensation law should control. In *Magnolia Petroleum Co.* v. *Hunt*, 320 U. S. 430, 88 L. ed. 149, the plaintiff was a resident of Louisiana, and was employed in that State. In the course of his employment he went to the State of Texas, and was injured, and claimed and was allowed compensation under the Texas law. He then went back to Louisiana, the State where the contract was made, and filed another claim for compensation under the Louisiana law. The defendant pleaded *res judicata* under the Texas law, and the award in plaintiff's favor was reversed by the United States Supreme Court.

These three cases illustrate the proposition that a State may adopt and enforce the compensation laws of another, or may enforce its own laws in spite of the contract of employment being made in another State, but when it does take jurisdiction, and makes an award, there cannot be another award in another State, notwithstanding the latter [fol. 125] has a separate statute upon the subject, which would be available to the claimant had he not otherwise proceeded under the laws of another State. The result is analogous to that resulting from taking possession of the

res,—viz., the court first obtaining possession may not be disturbed by actions of other courts having concurrent jurisdiction.

In the matter of liquidation of corporations it has been frequently held that a receiver has no power beyond the jurisdiction of the court appointing him, and consequently his possession or title does not bind the courts of another State. In the case, however, of laws which vest title of an insolvent corporation in a liquidating officer, it has been determined that such law is a part of the corporation's charter and follows it to wherever it is authorized to transact business, and therefore, if by the law of its origin a liquidator acquires title, then such title must be recognized in all other States. (*Relf* v. *Rundle*, 103 U. S. 222, 26 L. ed. 337; *Clark* v. *Williard*, 292 U. S. 112, 78 L. Ed. 1160.) In such case it is also competent for a State to adopt the policy of giving preference to resident creditors, where there is property of the insolvent corporation within the State. (*Clark* v. *Williard*, 294 U. S. 211, 79 L. Ed. 865.) But if there are no such creditors then a judgment rendered in another State than that of the residence of the liquidator is entitled to the same force and effect as in the State where it was rendered. It is open to the same attack, and subject to the same defenses. (*Robertson* v. *Pickrell*, 109 U. S. 608, 27 L. Ed. 1049) The tendency of most of the States is to give priority to the title of the liquidator unless a contrary policy is expressed. (*Clark* v. *Williard*, 292 U. S. 112, 78 L. Ed. 1160.) Missouri has not expressed such a policy, but, as pointed out later, follows the majority rule.

No case has been called to our attention which gives to the judgments of one State the force and effect that it has therein as against a prior judgment in another State, [fol. 126] under which possession of property has been taken by the officer of the latter court. In such instances the rule seems to be uniform that the court which first acquires jurisdiction over the *res* is entitled to retain it and dispose of it in accordance with the law and processes of its jurisdiction. *Harkin* v. *Brundage*, 276 U. S. 36, 72 L. ed. 457; *Penn General Casualty Co.* v. *Pennsylvania*, 294 U. S. 189, 79 L. ed. 850.

From these applications of full faith and credit we are required to ascertain the principle controlling this case. Illinois has a liquidation law which requires title to the

assets of an insolvent insurance company to vest in a liquidator. (Ill. Rev. Stat. 1943, chap. 73, par. 803.) Such a statute is valid. (*People* v. *Niehaus*, 356 Ill. 104.) Missouri has a similar statute, which has been construed substantially the same as that of Illinois. (*McDonald* v. *Pacific States Life Ins. Co.* 343 Mo. 1232, 124 S. W. 2d 1157.) The statute in each instance is merely authority to so place and vest the title, if the occasion requires it, as it (Ill. Rev. Stat. 1943, chap. 73, par. 800) requires a decree and finding of the circuit or superior court of insolvency, in which event the law places a title in the liquidator.

So, in this case, the title of appellee to the property and assets of Chicago Lloyds is based upon a judgment. While Missouri would have the power to give priority to Missouri creditors in the property of Chicago Lloyds located in that State, (*Clark* v. *Williard*, 292 U. S. 112, 78 L. Ed. 1160,) it has not done so; nor is there any proof there ever were any assets in Missouri at the time appellant obtained a judgment. The Illinois decree appointing a liquidator vested title and possession in him. This was known to appellant, because he filed a claim with the liquidator, in accordance with the Illinois Statute. The superior court of Illinois, by a decree finding insolvency, thus had obtained jurisdiction of the *res* by the law vesting title in liquidator, and such [fol. 127] liquidator is entitled to keep and retain such possession to the exclusion of the process of any other court. (*Harkin* v. *Brundage*, 276 U. S. 36, 72 L. ed. 457.) There being no Missouri law to the contrary this would likewise apply to the assets in Missouri. (*Clark* v. *Williard*, 292 U. S. 112, 78 L. ed. 1160.) Under the law both of Missouri and Illinois it is plain no possession could be had by virtue of a Missouri judgment entered long after a decree finding facts which would vest title in a liquidator. Full faith and credit requires the Missouri creditor claiming rights under a judgment to likewise recognize the binding effect of the Illinois judgment when he seeks satisfaction from assets in control of Illinois courts.

Considered in the light of a claim what rights does a judgment obtained by appellant carry? We have held under a similar law that a judgment against a corporation, after title to its assets had passed to a liquidator, gave plaintiff no rights. (*Evans* v. *Illinois Surety Co.* 319 Ill. 105). The Missouri court has reached substantially the same result. (*McDonald* v. *Pacific States Life Ins. Co.*

343 Mo. 1232, 124 S. W. 2d 1157.) The judgment of another State under the Federal statute enacted by authority of the full-faith-and-credit provision (28 U. S. C. A., sec. 687) is entitled to the *same* credit that it would have in the State of its rendition. In Missouri, not only the statute, but the construction of the statute, is similar to the law of Illinois, and had a liquidator been decreed in the State of Missouri, appellant either could not have had his judgment or, if he obtained it after the decree of insolvency, could not have enforced it against the property in the hands of the liquidator. He can have no greater rights in Illinois, under his judgment, than he could have in Missouri. (*Adams* v. *Saenger*, 303 U. S. 59, 82 L. ed. 649.) Therefore, to disallow appellant's claim would afford the same effect to his judgment in Illinois that, under the same circumstances, it would have had in Missouri. [fol. 128] Under this view the judgment of the superior court was correct.

The title of appellee is acquired under the statutes of Illinois and a decree of one of its courts of general jurisdiction. No authority has been called to our attention which gives a judgment acquired against the insolvent debtor, after its assets have been taken possession of and vested in a liquidator, priority over a judgment or decree which requires the distribution of the assets among those filing claims in pursuance of the law. Under such circumstances it seems logical to hold appellant was bound under the full-faith-and-credit clause to recognize the effect of this Illinois decree, as the courts of Illinois would be required to do had the judgment in Missouri been first made a lien, and since the liquidator appointed by the Illinois court acquired possession first, any rights against such property under the Missouri judgment would be inferior to, and subject to the Illinois judgment and decree.

Aside from the case of a surplus in the hands of the liquidator, we do not see how the cases cited by appellant have any application. All of those cases cited involving receivers are limited in their effect by the fact that a receiver has no authority whatever beyond the jurisdiction of the court which appointed it, and hence have no application to a situation in which the liquidator has acquired title to property which the courts of other States are bound to recognize.

This case comes within the class where the holder of

a foreign judgment, who is given no special rights against an insolvent corporation, may not, because of the judgment alone, impose a different method of distribution of its assets than the court administering the insolvent estate. Certainly no decision has been cited by appellant which would give him rights he would not have under like circumstances in the State of Missouri. We find no authority for the proposition that the full-faith-and-credit [fol. 129] clause of the constitution of the United States or the enabling acts thereunder are authority for placing the creditor who has obtained the judgment in a better position in another State than he would be in his own.

Appellant also claims the court improperly allowed the master the sum of five hundred dollars, without proof of the number of days he had devoted to examination of the pleadings. An allowance for testimony taken was granted at the rate fixed by statute. Under the heading of "Fees to be fixed by the court" the master claimed $500 for reading pleadings, testimony, examining briefs and authorities, hearing arguments, preparing findings of fact and law, drawing report, and passing upon objections filed thereto. He did not specify the amount of time he had spent in such work. When objections were made to this item of the master's fees the court heard the testimony of the master in open court, and made a finding that $500 was a reasonable fee for the services performed. No certificate of the evidence given by the master has been preserved.

While it is necessary that the amount of time the master devotes to service of this character be shown, (*Litwin* v. *Litwin*, 375 Ill. 90,) it must be presumed the amount of time spent by the master was disclosed to the court, when the decree recites he heard the master's testimony on objections and makes a finding of the reasonable value of the services rendered. In the *Litwin case* the lump-sum claim of the master was disallowed because he had an opportunity to explain same to the court and did not do so. In the instant case the master did make a satisfactory explanation to the court. If appellant thought the proof was insufficient he should have preserved the evidence, to enable us to pass upon it.

Both parties have argued other questions, which we have considered but do not deem it necessary to decide because the foregoing fully disposes of the merits of the case.

We are of the opinion that the order of the superior court of Cook county in disallowing the claim of appellant, and fixing the fees of the master, should be, and is in both respects affirmed.

Order affirmed.

[fols. 130-131] IN SUPREME COURT OF ILLINOIS

No. 28664

PEOPLE STATE OF ILLINOIS ex rel., PAUL F. JONES, Director of Insurance of the State of Illinois, Appellee,

vs.

CHICAGO LLOYDS, et al., CHARLES B. MORRIS, Appellant

Appeal from Superior Court Cook County 38S 1022

JUDGMENT—Filed September 19, 1945

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the order aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error.

Therefore, it is considered by the Court that the order of the Superior Court of Cook County aforesaid, be affirmed in all things and stand in full force and effect, notwithstanding the said matter and things therein assigned for error. And it is further considered by the Court that the said appellee recover of and from the said appellant. Costs by him in this behalf expended, to be taxed, and that he have execution therefor.

I, Earle Benjamin Seahey, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of said court this 27th day of November, 1945.

(S) Earle Benjamin Searcy, Clerk.
Supreme Court of the State of Illinois. (Seal).

[fol. 132] [File endorsement omitted.]

[fol. 133] IN THE SUPREME COURT OF ILLINOIS

[Title omitted.]

PPTITION FOR REHEARING—Filed October 13, 1945

The appellant presents this petition for rehearing and submits that the Court has overlooked or misapprehended the following points:

I

The Constitution of the United States, the Act of Congress enacted May 26, 1790, and the decisions of the Supreme Court of the United States require that full faith and credit be given to the Missouri judgment.

[fol. 134] This point is discussed in our brief at pages 31 to 55. We think the Court

(1) has misinterpreted many decisions of the Supreme Court of the United States;

(2) has overlooked principles that have been decided by that Court or by this Court contrary to the opinion here;

(3) has erroneously concluded that the full-faith-and-credit rule is not applicable to a judgment of a sister-State in a case where the action, on which the sister-State judgment is founded, if originally commenced in the State to which the judgment is brought, could not be maintained there;

(4) has overlooked the distinction between the faith and credit required to be given to *judgments* and that required to be given to the *statutes and laws* of sister States;

(5) has misapprehended the effect which the vesting of title to the property of the company in a liquidator and the effect which jurisdiction over that property have upon the application of the full-faith-and-credit rule; and

(6) has overlooked the rule that the full-faith-and-credit clause is to be liberally construed.

The opinion divides the cases cited therein involving the full-faith-and-credit rule into four classes. However, it does not definitely assign this case to any of those classes.

First Class

The cases cited as being within this class are typical of the application of the full-faith-and-credit rule.

[fols. 135-139] Second Class

The opinion states that the second class "covers a wide field" and that full faith and credit have been denied in cases of this class. Yet, in one of the cited cases in this class full faith and credit were required. One did not involve a sister-State judgment at all and did not present any question under the full-faith-and-credit rule. One involved a judgment for a penalty, but not the full-faith-and-credit rule. And in another, the court in which the action on the judgment was brought did not have jurisdiction.

* * * * * * *

[fols. 140-145] Third Class

The opinion describes the third class of cases as those which arise "when the judgment or decree sought to be enforced will, if enforced, require the application of a different law to property, or the right to take property, from that of the State in which it is sought to be enforced." Five cases are cited as "instances in which the judgment of one State is unenforceable in another under the full-faith-and-credit clause, if opposed to the law of the latter" (p. 8).

* * * * * * *

[fols. 146-160] Fourth Class

The opinion then refers to a fourth class of cases,—cases "where a party has an option to proceed under the laws of one of two or more States having similar laws" (p. 8). Three cases are cited.

* * * * * * *

[fol. 161] II

One purpose of the full-faith-and-credit clause was to give nation-wide application to rights judicially established in each State.

This point has been overlooked. (See our brief, pp. 33-34.

[fol. 162] III

The full-faith-and-credit clause is liberally construed and the Supreme Court of the United States has said that it is aware of no exceptions to it in the case of a money judgment on a civil cause of action.

This point has been overlooked. (See our brief, pp. 34-38.) The Missouri judgment is of that nature.

The trend is to give the full-faith-and-credit clause broader application. (Cf. *Williams* v. *North Carolina*, 317 U. S. 287, which expressly overruled *Haddock* v. *Haddock*, 201 U. S. 562.)

IV

Independently of the full-faith-and-credit clause, a money judgment rendered on a civil cause of action in one State against an insolvent insurance company whose property has been taken by a statutory receiver of another State ought to be allowed in the liquidation proceedings as a general claim.

This point has been overlooked. (See our brief, pp. 75-83.)

V

Refusal to allow the judgment to share in the debtor's property violates Section 2 of Article IV and Section 1 of Amendment XIV to the Federal Constitution.

This point has been overlooked. (See our brief, pp. 92-96.)

The contention that the appellant has been denied the privilege of suing in the receivership-courts of Illinois raises a substantial and important constitutional question and, we think, merited some comment. It may have been [fol. 163] overlooked. Rights under Section 2 of Article IV may be entirely independent of rights under the full-faith-and-credit clause. (See *Blake* v. *McClung*, 172 U. S. 239, 258.) But, in a case like this, the right to share in the debtor's property may be asserted under both clauses; and, by Section 1 of Amendment XIV, the State of the liquidation is prohibited from abridging that right. By section 1 of Article IV, a judgment creditor is entitled to have full faith and credit given to a sister-State judgment, and by section 2 of that article he has the right to maintain actions in Illinois. By section 1 of Amendment XIV, Illinois can not make or enforce any law which shall abridge the privileges and immunities of citizens of the United States. Thus, the rights under Sections 1 and 2 of Article IV are also protected by Section 1 of Amendment XIV.

The Illinois Insurance Code, by the construction given it here, denies that right. This Court has construed the provision which vests title in the liquidator and other provisions of the Code as denying to sister-State judgment creditors the right of participation.

The contentions that refusal to allow the judgment to share in the property of the debtor deprives the appellant of his property,—the judgment,—without due process of law and also denies him the equal protection of the laws in violation of Section 1 of Amendment XIV to the Federal Constitution have not been commented upon and apparently have been overlooked.

[fol. 164]

VI

The opinion erroneously treats Chicago Lloyds as a corporation

Although at the outset (p. 2) the opinion correctly states that Chicago Lloyds is an unincorporated association, it later treats the association precisely as if it were a corporation which had received a charter from this State, into which has been read the provisions of the Illinois Insurance Code.

Chicago Lloyds received no charter from the State of Illinois into which it is possible to read the Insurance Code.

One phase of the distinction between an unincorporated association and a corporation is commented upon at pages 11, 14, 25-26, 27, 29, 30 of our reply brief. It is difficult to perceive how the rule that a statute of the State of incorporation, by which the title to the property of a corporation, will become vested in a liquidator in some circumstances, can be made to apply to an association which has received no charter from the State.

VI

The opinion erroneously states that claimant concedes he had notice of the injunction.

Although the decision here is not rested upon the injunction, the opinion states that the claimant concedes that he had notice of it. The contrary is the fact. (See reply brief, pp. 2-3.) That the restraining order affords no foundation for denying participation is shown at pages 83 to 96 of our brief and at pages 36 to 40 of our reply brief. [fol. 165] The new exception which this Court has here made to the full-faith-and-credit rule and some statements of legal principles contained in the opinion cannot be reconciled with the decisions of the Supreme Court of the United States. The holdings of many of the cases cited have been misappdehended. A tort claim is here held to be contingent. Important constitutional questions have been overlooked. It is respectfully submitted that, upon rehearing, the opinion should be revised.

Respectfully submitted, J. L. London, St. Louis, Missouri; Ford W. Thompson, St. Louis, Missouri; Tannenbaum, Polikoff & Schmidt, Attorneys for the Appellant.

[fols. 166-167] In Supreme Court of Illinois

[Title omitted]

Order Denying Rehearing—November 19, 1945

And now on this day the Court having duly considered the petition for rehearing filed by appellant herein, and being now fully advised of and concerning the premises,

doth overrule the prayer of the petition and denies a rehearing in this cause.

[fol. 168] [File endorsement omitted]

IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

PETITION FOR APPEAL FROM THE SUPREME COURT OF ILLINOIS TO THE SUPREME COURT OF THE UNITED STATES—Filed February 26, 1946

To the Chief Justice and the Justices of the Supreme Court of the United States:

Charles B. Morris, your petitioner, respectfully shows:

I

That petitioner is the appellant in the above entitled cause.

II

Statement of Case

This case came to the Supreme Court of Illinois, the Court of last resort in said State, on a direct appeal to it from the Superior Court of Cook County, Illinois, for the reason, as stated in the original opinion of said Supreme Court of Illinois rendered September 19, 1945, that—

> "Appellant's claim involves a construction of the constitution of the United States, and authorizes a direct appeal to this court. • • • "
>
> "The controversy in this case arises out of the disallowance of a claim of Charles B. Morris, appellant, by the Director of Insurance of Illinois, the liquidator of Chicago Lloyds, hereinafter referred to as "liquidator,' appointed by the decree of the Superior Court of Cook county upon the petition of the Director of Insurance and the Attorney General of the State of Illinois.
>
> [fol. 169] "As finally amended appellant's claim consists of a judgment rendered in the circuit court of the

city of St. Louis, Missouri, against Chicago Lloyds, three years after the liquidator of Chicago Lloyds had been confirmed by the decree of the superior court. The claimant contended the full-faith-and-credit clause of the constitution of the United States (art. IV, sec. 1), and the acts of Congress enacted pursuant thereto, required that such judgment be recognized in the Illinois liquidation proceeding and allowed as a claim against the assets of Chicago Lloyds for the full amount of such judgment." * * *

"The question here presented, as set out in the report of the master, is as follows: 'Had the liquidator of an insurance company, organized and doing business under the laws of Illinois, or the court appointing him, the right to pass upon the merits or the amount of a claim, arising out of a suit instituted in another forum before the appointment of the liquidator and consummated by a judgment of such foreign court after such appointment?' This presents a new application of the full-faith-and-credit clause, which is still debatable, or at least questionable, and therefore is subject to review by this court on direct appeal from the superior court of Cook county. * * * Incidentally the question is also in the case under such clause of the constitution as to what effect the prior decree of the Illinois court, appointing a liquidator for Chicago Lloyds, has upon a subsequent judgment rendered in another State seeking satisfaction from the same assets. These questions, as presented, we believe have never been decided by the United States Supreme Court as the final arbitrater of such questions arising under the full-faith-and-credit clause."

The substantive facts presented by this record are as follows: Petitioner Charles B. Morris, hereinafter referred to as appellant, is and at all times therein stated was a citizen of St. Louis, State of Missouri and for more than twenty years next prior to 1929 was engaged in the insurance business, and acting as the agent of a large number of insurance companies and writing policies of insurance, other than life, for them in the City of St. Louis and throughout the State of Missouri (R. 41). That in 1929 he was duly appointed a sub-agent to write insurance in the State of Missouri for an unincorporated and voluntary

association and aggregation of more than three hundred individuals, residents of many different States of the Union, who were associated together under a voluntary contract, and under the name "Chicago Lloyds," and conducting their said insurance business in many States under a Lloyds plan under a power-of-attorney executed by each said [fol. 170] associated individual and granted to an Illinois corporation called "Associated Underwriters, Inc."; and as such said Chicago Lloyds was licensed by the year, by yearly renewals of such license, to transact their insurance business in the State of Illinois, and to sue and be sued in that name in the State of Illinois, and also to transact their insurance business in other States by compliance with, and in conformity with the laws of such States. That said Chicago Lloyds applied to the State of Missouri for authority and license to transact its said insurance business in the State of Missouri in the name "Chicago Lloyds", and was granted a license to so transact its business in the State of Missouri and to sue and be sued in said name in said State under the laws of the State of Missouri, said laws of Missouri providing that service of process upon said Chicago Lloyds should be by personal service upon the agent and the attorney-in-fact, Associated Underwriters, Inc., or by serving the Insurance Commissioner of the State of Missouri. After acting as such sub-agent for Chicago Lloyds for a period of three years, a dispute arose in October of 1932 as to whether appellant had properly accounted for all premiums due from him to Chicago Lloyds for insurance he had written for them, which resulted soon thereafter in his being arrested on four separate occasions and confined in jail for a total of twelve days and nights, on a false and malicious charge of embezzlement made by Chicago Lloyds and its attorney-in-fact Associated Underwriters, Inc. (R. 44, 45), with the consequent effect of completely destroying his established insurance business and reputation, and causing him great financial loss, expense and humiliation.

Upon the above false charge he was required to stand trial in the Criminal Court and at the close of the evidence adduced against him, the Court sustained a demurrer to the evidence and directed the jury to acquit him (R. 45). Thereafter and while said Chicago Lloyds was continuing to transact its business in the State of Missouri, on August [fol. 171] 24, 1934, appellant filed in the Circuit Court of

the City of St. Louis a suit for damages for said false arrest and malicious prosecution, in the sum of $100,000, against said Chicago Lloyds and said Associated Underwriters, Inc., attorney-in-fact for Chicago Lloyds, said Court being a Court of general jurisdiction and having jurisdiction of the said subject matter and obtained personal service upon said defendants, who were continuing to transact said business in this State, and who entered demurrers which were overruled, and filed answers to the merits. Said cause was at issue and awaiting trial in said Missouri Court, when on February 9, 1938, a petition was filed in the Supreme Court of Cook County, Illinois at the relation of the Director of Insurance, in which petition it is stated that Chicago Lloyds is an unincorporated Association, and praying that Chicago Lloyds show cause why an order should not be entered by that Court that sufficient cause exists for the liquidation of the organization, Chicago Lloyds, and directing the Director of Insurance to take possession of its property, business and affairs and to liquidate the same in accordance with the provisions of the Insurance Code (R. 1). A consent was filed by Chicago Lloyds, through its said attorney-in-fact, to the entry of an order of liquidation, and to the liquidation of Chicago Lloyds by the Director of Insurance (R. 4), and on the same day the Court entered a decree, adjudging that sufficient cause existed for the liquidation of Chicago Lloyds and ordering that the Director of Insurance take possession of the property and liquidate the same, in accordance with Article XIII of the Illinois Insurance Code (R. 45).

At the time this decree was entered, Chicago Lloyds was the only respondent to the petition. Thereafter, or June 24, 1938, after the decree, a petition to join the individual members of said Association, also the attorney-in-fact and [fol. 172] the Trustee of its securities, and the unknown owners as parties respondent, was filed and an order joining them as respondents was entered therein (R. 8). On February 15, 1938, an order fixing the time and procedure for filing claims was entered, requiring claims to be presented to the Liquidator on or before November 15, 1938. Said Liquidator thereafter, by mail addressed to appellant in the City of St. Louis, notified appellant to present his verified proof of claim on or before November 15, 1938, stating that he had been directed to take possession and liquidate the property of Chicago Lloyds by order of the

Supreme Court of Cook County February 9, 1938. Thereafter on September 21, 1938, and in response to said notice, appellant mailed his verified claim to said Liquidator, based upon said damage suit then pending in the Circuit Court of the City of St. Louis, Missouri (R. 14, 58) and attached thereto a copy of the petition in said damage suit, and stating that said suit was awaiting trial in the Circuit Court of the City of St. Louis, and that when judgment thereon was obtained, he would file a supplemental and amended claim (R. 14, 58). Thereafter, on the 17th day of March, 1941 (R. 49) said tort case was set for trial in said Circuit Court of the City of St. Louis. Thereupon the attorney for Chicago Lloyds withdrew and notified the Court that he withdrew on instructions of said Liquidator (R. 22), whereupon said trial proceeded. Plaintiff waived a jury and the cause was submitted to the Court on the petition of plaintiff and the answers of Chicago Lloyds and Associated Underwriters, Inc., and the evidence adduced, and the Court took the case under advisement as submitted, and thereupon directed the Clerk of said Court to write a letter to said Liquidator (R. 53), notifying him of the above and requesting his reaction thereto. Said Liquidator's attorney answered said letter on March 26th, (R. 59), stating that said attorney for Chicago Lloyds withdrew on instructions, and that Chicago Lloyds was being liquidated in the proceeding pending in the Supreme Court of Cook County, Illinois, and that it is the Liquidator's position that the plaintiff in said suit is [fol. 173] enjoined from obtaining or attempting to obtain preferences, judgments, attachments, or other like liens, until the further order of the Court (R. 59-60); "that liquidations proceedings in this state being an action in rem is analogous to a bankrupt proceeding, and the injunction order is good without notice and without service of process upon a violator of the same; that while they fully appreciate that the injunction does not prevent the Court from entering judgment, they believe that plaintiff, by asking the Court to proceed to judgment against Chicago Lloyds, is in direct violation of the injunction, and should he bring such judgment into Illinois and attempt to enforce it here, he will be violating the injunction order." (R. 60)

Thereafter, on April 17, 1941, said Circuit Court of the City of St. Louis duly entered a joint and several judgment in favor of appellant Morris, and against Chicago Lloyds

and Associated Underwriters, for the sum of $35,000.00 actual damages and $15,000.00 punative damages, a total of $50,000.00 (Ex. 2, R. 49), with interest thereon at 6 per cent per annum until paid, together with costs, and ordered an execution issued thereon.

Thereafter, on August 2, 1941 (R. 23), appellant Morris filed with said Liquidator his supplemental and amended claim for $50,000 based on said Missouri judgment and attached thereto a duly authenticated copy of said judgment and of said judgment roll.

Thereafter, on June 10, 1942, the said Liquidator, without notice and without any hearing whatsoever before him upon said claim so reduced to judgment, filed in said Superior Court of Cook County his report on claims and recommended the disallowance of appellant's claim, and mailed a copy of his report to appellant, wherein he gave as a reason for his recommendation of disallowance that the judgment was obtained subsequent to the entry of the order of liquidation and in violation of an injunctive order entered in the case on February 9, 1938, and subsequent to [fol. 174] the date set by the order of the Court for the filing of claims in the proceeding (R. 10).

To the report of the Liquidator recommending the disallowance of said claim, appellant properly filed his exception (R. 10-16), setting out that there had been no hearing upon the claim before the Liquidator, and that the said recommendation of disallowance was entirely "ex parte"; and that the claim and amended claim were properly filed; that the Liquidator had given an improper and unlawful extraterritorial effect to said injunctive order made by the Court, and failed to find, or state, or make known to the Court in his recommendations that claimant is and was a non-resident of Illinois, and a citizen of St. Louis, Missouri, and had instituted a suit against Chicago Lloyds in the year 1934, long prior to the entry of the decree directing liquidation, and that the said suit was pending and was being defended by Chicago Lloyds in the Circuit Court of St. Louis, Missouri, after service of process as shown by the record; and was also so pending at the time of the entry of the order directing liquidation, February 9, 1938; that the Liquidator had failed to give the judgment of the Circuit Court of the City of St. Louis, State of Missouri, that full faith and credit to which it is entitled by

reason of the provisions of Article IV, Section 1 of the Constitution of the United States, and further that claimant had been denied as a citizen of the State of Missouri the privileges and immunities of citizens of the State of Illinois, as guaranteed by Article IV, Sec. 2 of the Constitution of the United States, and that the Illinois Court had no right to enforce any law of the State of Illinois which abridged the privileges of the claimant as a citizen of Missouri and of the United States, or to deny to him as such citizen of Missouri the equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution by Section 1 thereof; and further, that he was entitled to the benefit and protection of the Sixth Article to the Constitution of the United States, to the end that his claim may be adjudicated according to the provisions of the Con- [fol. 175] stitution of the United States and the laws of the United States made under and pursuant thereof (R. 16).

Thereafter said Superior Court of Cook County appointed a Master to hear and consider said objections and exceptions, and ordered him to file his recommendations and report to the Court (R. 17). The appellant offered in evidence before the Master the judgment and judgment roll of the Circuit Court of the City of St. Louis in favor of the claimant and against Chicago Lloyds for the sum of $50,000.00. There was no evidence offered by the Liquidator tending to show that the claimant Morris was a party to said liquidation proceedings, wherein the decree of February 9, 1938 was entered; or that he was ever served with notice of said injunctive order, or that he had ever been cited and found guilty of contempt of said order. The only evidence offered by the Liquidator was the notice to appellant to file his claim with the Liquidator within the time fixed by the Court (R. 33, also Additional Abstract, p. 16), and the original claim filed by appellant in response to said notice, the amended claim filed on August 2, 1941 (R. 23), and the said two letters above mentioned (R. 53 and 59), viz., one directed by the Judge of the Circuit Court of the City of St. Louis, and the other an answer thereto by the attorney for said Liquidator.

The Master found that, on February 9, 1938, the petition praying for an order that sufficient cause exists for liquidation of "Chicago Lloyds," an unincorporated association of individuals transacting an insurance business in the

State of Illinois and other States," was filed (R. 18-20, 56); that it appears that a resolution was adopted by the Directors of Associated Underwriters, Inc., Attorney-in-Fact for Chicago Lloyds, consenting to the entry of such an order, and consenting to the liquidation of Chicago Lloyds by the Director of Insurance. A decree was entered on February 9, 1938, directing the Director of Insurance to take possession of the property of "Chicago Lloyds", and [fol. 176] to liquidate the same in accordance with the terms of the Illinois Insurance Code (R. 20); that this decree contained an injunctive order, a portion of which the Master incorporated into his report (R. 21), which order among other things "restrained all persons from in any manner interfering with the possession of said Director of Insurance, in or to the books, records or property of Chicago Lloyds, or with the liquidation of its business, until the further order of the Court; or from obtaining or attempting to obtain preferences, judgments, attachments or other like liens; and from making any levy against Chicago Lloyds, or its property, assets, books or records, while the same are in possession and control of the Liquidator."

The record discloses that at no time has appellant ever asked for any preference, lien or any position of advantage other than the right to share pro rata with the other general creditors, without any preference or priority whatsoever.

There is no finding by the Master that appellant was ever served with a copy of the injunction, or had any notice thereof. It was stipulated that the appellant received notice from the Liquidator to file a verified claim with the Liquidator (R. 33). (This notice is set out p. 16 Additional Abtsract; it contains no reference to any injunctive order.) In response to that notice, he filed his original and amended claim. There was no stipulation that appellant had notice of the injunction order, or any evidence whatever from which such notice could be deduced. Counsel for the Liquidator specifically reserved the right to produce evidence on that (R. 34) (and Additional Abs. 5) but produced none.

The facts as summarized by the Master from the evidence submitted, both oral and documentary, are set out in Record pages 18 to 24. On pages 24, 25 and 26 are set out the conclusions of law. Beginning on page 26 are set

out his recommendations and a transcript of the proceedings and the evidence taken before the Master.

[fol. 177] The Master in his "Conclusions of Law" (R. 24), finds "that there is no dispute on any material fact in the matter involved in this reference and the only question involved is a question of law, stated thus":

> "Had the liquidator of an insurance company, organized and doing business under the laws of Illinois, or the Court appointing him, the right to pass upon the merits or the amount of a claim, arising out of a suit instituted in another forum before the appointment of the liquidator and consummated by a judgment of such foreign court after such appointment."

The Master recommended (R. 26) that "the recommendation of liquidator that the claim be disallowed should be sustained and that claimant's objection to said recommendation be overruled and denied, unless claimant desires to establish his claim by other evidence under the direction of this court in this proceeding." (Note: The Statute of Limitations (two years) would have run against the claim if it had to be filed denovo. Sec. 1016 R. S. Mo. 1939 (Sec. 864, R. S. Mo. 1929). Sec. 15, Chap. 83, R. S. Ill. 1937.

Objections (which by order of said Superior Court were to be treated as exceptions (R. 17) were filed by appellant to the Master's Report (R. 34-40), wherein appellant excepted and objected to the said report for the reason that he had failed to give full faith and credit to said Missouri judgment duly and properly authenticated in support of plaintiff's claim, in violation of Section 1 of Article IV of the Constitution of the United States and the Acts of Congress passed in pursuance thereof, providing for full faith and credit to said Missouri judgment, and that to refuse to accord full faith and credit to said judgment is to deny appellant his rights under Section 2 of Article IV of the United States Constitution, and is a violation of Section 1 of Amendment XIV to the United States Constitution (R. 38).

The case was thereupon argued before the Superior Court of Cook County upon said exceptions (R. 24-40). The final order or decree confirming the Master's Report, with respect to the claim of Charles B. Morris, was entered Sep-

tember 28, 1944 (R. 61). The Court found (R. 61) "that [fol. 178] the findings of the said Master in Chancery are proper, true and correct, and that the objections to the Master's report filed by the claimant * * * (which were ordered to stand as exceptions before the Court), were properly overruled by the Master." (R. 61). "That the judgment in favor of Charles B. Morris in Case No. 206424 in the Circuit Court of the City of St. Louis, Missouri, has no force or binding effect upon Liquidator, and should not be considered in this liquidation proceedings." "That Morris has wholly failed and refused to proceed or to offer proof or evidence before the Court or the Master, other than the transcript of judgment entered in said case No. 206424 and the other evidence introduced by claimant, as shown by the transcript of testimony filed with the Master's report, with respect to the liability or amount of damages of claimant against Chicago Lloyds."

The Court "Orders, adjudges and decrees: 1. That the exceptions of claimant to said Master's report are overruled and said report in all respects approved and confirmed. * * * 3. That said claim of Charles B. Morris is denied and disallowed; that his objections to the Liquidator's Tenth Report on Claims and his recommendation that said claim be disallowed are overruled, and said report on claims and the recommendation of disallowance of said claim is approved and confirmed, and said claim disallowed in accordance with the recommendations contained in the Master's report." (R. 61).

Thereafter the appellant duly prosecuted his appeal to the Supreme Court of Illinois, which was the Court that had jurisdiction (R. 64). Appellant filed his brief in said Supreme Court and therein (pp. 9-11) set out the several errors that be assigned for reversal, as required by the Civil Practice Act of Illinois and Rule 39 of said Supreme Court; and therein specifically contended that the interpretation, construction, application and effect given to the injunctive statute, Section 189 of the laws of the State of Illinois, 1937, Chapter 73, referred to as the Illinois Insurance Code, and upon which said Superior Court had [fol. 179] given extra-territorial effect to the said injunctive order entered February 9, 1938, is unconstitutional because there is and was no finding by the Master and no evidence whatever in the record, that appellant had been a party to said liquidation proceedings; or had been served

with said injunctive order; or had any notice whatever thereof; or that the continued prosecution of said tort action in the Missouri Court would constitute a violation of said injunctive order; and that therefore to so apply said law as a ground and reason and as a penalty by refusing to give full faith and credit to said judgment, was arbitrary, erroneous and a complete denial and disregard to appellant's constitutional rights secured to him as a citizen of the State of Missouri and of the United States by Article IV, Sections 1 and 2; also Article VI; and the Fourteenth Amendment to the Constitution, thus depriving him of his property without due process of law and abridging his privileges and immunities and denying to him the equal protection of the law.

In answer to said original brief filed by appellant in said Supreme Court, the appellee filed a brief wherein for the first time, in addition to Section 189, the appellee contended that said Section 189 in connection with Sections 191, 193, and 196, when legally interpreted, construed, applied and given effect, justified the Supreme Court in affirming the judgment on the additional ground that notwithstanding respondent Chicago Lloyds was in fact a mere voluntary unincorporated association of individuals, transacting an insurance business in many other states of the Union, including the State of Missouri, besides the State of Illinois, and, notwithstanding it was not in fact a corporation having a charter from the State of Illinois and created and existing by virtue of the laws of Illinois, and also notwithstanding no petition had been filed or any order made in said statutory liquidating proceeding pronouncing Chicago Lloyds legally dissolved in conformity with Section 196, that nevertheless the legal effect of Chicago Lloyds being ordered liquidated under said Section 189, and the [fol. 180] vesting of title to their assets and property in such statutory liquidator, was to abate any and all actions pending against said Chicago Lloyds in Sister States and to completely dissolve said unincorporated association of individuals as an entity; (pp. 6-11 of said brief are hereafter set out); and further contending that the judgment rendered against said association Chicago Lloyds in said sister States subsequent to February 9, 1938, was therefore void and not entitled to the benefit of the full faith and credit clause of the Constitution of the United States, and that such an effect given to said Sections 189, 191, 193 and

196 would not constitute a violation of any of appellant's constitutional rights.

Thereafter appellant filed in said Supreme Court his reply brief, and on pages 25, 26 and 28, and in his summary on page 41 of said brief, met said new contentions and subsequently orally presented his said contentions without avail.

The errors summarized on pages 11 and 12 hereof, are specifically set out on pages 9-11 of Appellant's original brief, as follows:

"1. In finding or holding that the findings of the master are proper, true and correct and that the claimant's objections to the master's report were properly overruled; in overruling the claimant's exceptions to said report; and in approving said report.

"2. In overruling the claimant's objections to the report of the liquidator on the claim based upon the Missouri judgment and to the recommendation of the liquidator that said claim be disallowed; in approving the liquidator's tenth report on claims in so far as it recommended the disallowance of the claim on said Missouri judgment; and in disallowing said claim.

"3. In finding that the Missouri judgment in favor of claimant and against Chicago Lloyds, et al, has no force or binding effect upon the liquidator and should not be considered in the liquidation proceeding as evidence of the liability to claimant or of the amount of his claim; and in failing to hold that the liquidator was estopped by said judgment, and that it was res judicata and binding and conclusive evidence of the claim of appellant.

"4. In failing to hold that the Missouri judgment was entitled to full faith and credit under Section 1 of Article IV of the Constitution of the United States, the Act of Congress enacted May 26, 1790, and the decisions of the Supreme Court of the United States; and in failing to give full faith and credit to said judgment.

"5. In holding that the decree entered February 9, 1938, restrained claimant from prosecuting to judg- [fol. 181] ment the action pending in Missouri.

"6. In failing to hold that the decree entered February 9, 1938, did not restrain claimant from prosecuting the action then pending in Missouri to judgment, for the reason that the Court did not have power or authority to restrain the claimant from prosecuting that action inasmuch as the judgment rendered therein would not be a lien upon the property in the possession of the liquidator.

"7. In failing to hold that the decree entered February 9, 1938, did not restrain the claimant from prosecuting the action then pending in Missouri to judgment, for the reason that the Court did not have jurisdiction over the claimant.

"8. In failing to hold that Section 189 of the Illinois Insurance Code (which the court below construed as warranting the entry of an injunction against a person not a party to the proceeding and not served with process or notice, and over whom the court below had no jurisdiction, restraining him from prosecuting an action pending in a sister State, and as warranting on the strength of that injunction, the refusal to allow a claim, based on a judgment obtained in the sister State, to share in the property of Chicago Lloyds in the possession of the liquidator), is unconstitutional for the reasons (1) that, so construed, it is inconsistent with Section 1 of Amendment XIV of the Federal Constitution because it deprives the claimant of his property,—(the right to prosecute the suit theretofore commenced in a sister State and the right to have his claim on a judgment rendered in his favor in that State allowed as a claim against Chicago Lloyds and entitled to share with other creditors in the assets of Chicago Lloyds)—without due process of law; (2) that, so construed, it abridges the privileges and immunities of citizens of the United States, guaranteed by Section 2 of Article IV of the Federal Constitution, by denying to claimant the right to bring suit on the Missouri judgment to which Illinois, by Section 1 of Article IV, is required to give full faith and credit; (3) that, so construed, it invades the privileges and immunities of claimant guaranteed by Section 1 of Amendment XIV to the Federal Constitution; and (4) that, so con-

strued, it denies to claimant the equal protection of the laws guaranteed by that section.

"9. In failing to hold that the court could not give extraterritorial effect to the injunction entered February 9, 1938, by refusing to give full faith and credit to the judgment of Missouri."

The contentions of appellee, summarized on pages 12 and 13 hereof. are specifically set out on pages 6 to 11 of Appellee's Brief as follows:

"A. Under Paragraph 803 of Chapter 73, the Liquidator is vested with title to all property, contracts and rights of action of the company as of the date of the liquidation order.

[fol. 182] "B. Paragraph 806, Chapter 73, provides that the rights of all creditors shall be fixed as of the date of the order of liquidation unless otherwise ordered, and that order provided such rights were fixed as of noon on February 15, 1938 (Abs. 5).

"C. Paragraph 801, Chapter 73, provides for the issuance of an injunction 'to prevent waste of assets or the obtaining of preferences, judgments, attachments or other like liens,' and such an injunction was issued (Abst. 6).

"When a state has adopted a policy governing the liquidation of insurance companies, that policy is binding upon creditors wherever they may be located. A judgment taken against the insolvent subsequent to the date of the entry of the liquidation order is not entitled to recognition in the liquidation proceeding (citing cases).

"All parties, whether policyholders or creditors, dealing with an Illinois insurance company have presumptive knowledge of its charter provisions and the statutory law governing its liquidation. (Citing cases.)

"The laws of Illinois governing the liquidation of insurance companies and judicial proceedings thereunder are entitled to full faith and credit in the courts of sister states. (Citing cases.)

"A corporation carries with it all charter provisions governing it into each state in which it carries

on business, and all parties doing business with it are presumed to know the law governing it and are bound thereby. (Citing cases.)

"B. The general rule in a statutory liquidation proceedings where a statutory liquidator is vested with title is that judgments taken against the insolvent company, subsequent to the entry of the liquidation order, are not provable in the liquidation proceedings. (Citing cases.)

"Judgments taken against an insolvent insurance company, subsequent to the order of dissolution, are subject to collateral attach in the liquidation proceedings." (Citing cases.)

Pages 25, 26, and 28, and the summary on page 41 of appellant's reply brief, referred to on page 13 hereof, are as follows:

"He relies principally upon Section 191 of the Code (Ill. Rev. Stat., Chap. 73, Sec. 803), which provides that title to the property of a company in liquidation is vested in the Director. (Brief, p. 28) Cases involving corporations are cited for the proposition that the title vested in the Director is recognized in other jurisdictions. The reasoning upon which the decisions in those cases rests is that a State, which has created a corporation, may say who the agents of that corporation are to be in case its charter is forfeited. (See quotation from Relfe v. Rundle, on pages 32 and 33 of the brief of appellee.) That reasoning is not applicable to associations which are not created by a State. Chicago Lloyds received no charter from the State of Illinois. (Roach & Co. v. Harding, 348 Ill. 454, 464; 7 C. J. S. "Associations" 19, 21.) It was formed by act of its [fol. 183] members, many of whom are residents of States other than Illinois. (Claimants' Exs. Nos. 15 and 16.) It transacted business in Illinois. It also transacted business in Missouri, and it may have done so in other States. If an association owns property located in more than one State, which of the States has the power of designating the 'agent' (if he can be called an agent of the association) to liquidate all its property wherever located? A corporation, which is created by the laws of one of the States, carries its

charter and the laws of the State of its creation governing it into other States in which it transacts business, and so the State of incorporation may designate the liquidating agent. An association has no charter to carry. Chicago Lloyds has no charter into which Section 191 of the Code can be read. Consequently, the theory whereunder a statutory liquidator of a corporation succeeds to the title to its property located in another State does not apply to an association." (Appellant's Reply Br. pp. 25, 26.) • • •

"At this point in his argument the Director has injected a new contention, not against the provability of the judgment but against its validity. He argues that the judgment is invalid because the laws of Illinois are entitled to full faith and credit in Missouri and that under the full faith and credit clause the Missouri court 'should have refused to enter judgment against Chicago Lloyds.' (Brief, p. 35.) He forgets that, but a few pages before, he argued that a State is not required to give faith and credit to the statutes of sister States. (Brief, pp. 19-26.) Surely, the courts of one State are not to be ousted of their jurisdiction by legislation of another." • • • Reply Br. p. 28.) • • •

"B. Chicago Lloyds continued to remain capable of being sued despite the entry of the order that the Director take possession of and liquidate its property and a judgment rendered after the entry of such an order is not void.

"B. Chicago Lloyds continued to remain capable of being sued after its certificate of authority to transact business in Illinois expired, even assuming that that certificate was not renewed.

"C. Illinois is required to give full faith and credit to the Missouri judgment.

"The fact that the liquidation proceeding here is statutory does not confer exclusive jurisdiction to l']uidate claims upon the supervising court or warrant that court in disallowing claims on judgments rendered by competent courts of sister States after the entry of the order of liquidation, where the company is an association which has not been dissolved.

"A. Assuming that the Director of Insurance of the State of Illinois became vested with title to all property of Chicago Lloyds, it does not follow, as an incident of that title, that claims against it may not be liquidated in competent courts of sister States.

"B. Assuming that the claimant is presumed to know that any claim he might have against Chicago Lloyds would be 'dealt with' in accordance with the provisions of the statutes of Illinois, it does not follow that claims against Chicago Lloyds may not be liquidated in competent courts of sister States." (Reply Br. pp. 41, 42.)

[fol. 184] The Supreme Court affirmed the judgment of the lower Superior Court of Cook County, and in and by its opinion discloses clearly that it adopted said contentions of appellee; and by so interpreting, construing, applying and giving effect to said sections of said Illinois law, it wrote an opinion thus justifying the violation of appellant's constitutional rights, filing and entering said opinion September 19, 1945.

Thereafter and within the time provided by the Rules of said Supreme Court, appellant filed a petition for rehearing of said cause, wherein he specifically directed the attention of the Court to said erroneous interpretation, application and effect that it had given to said Illinois statutes and that by such effect all of appellant's constitutional rights had been disregarded and denied, which said petition for rehearing was overruled and denied on the 19th day of November, 1945. Thereafter said original opinion was modified in certain respects by order of the Court and entered on November 26, 1945.

No further steps can be taken in any Illinois Court, and appellant's only remedy lies in an appeal to the Supreme Court of the United States from the said final judgment.

III

The United States Supreme Court has jurisdiction of this cause on appeal under and by virtue of Section 344 (U. S. C. A.) Title 28 (Judicial Code, Sec. 237 Amended) providing that a "final judgment or decree in any suit in the highest court of a state in which a decision in the suit could be had * * * where there is drawn in question

the validity of a statute of any state, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error."

[fol. 185] Meyer vs. Fleming, et al., Trustees, decided 2/4/46 by U. S. Sup. Ct.;
Charleston etc. Ass'n. vs. Alderson, Vol. 89, p. 621, Lawyers Advance Opinions, Feb. 26, 1945;
Memphis, etc. Gas Co. vs. Beeler, 315 U. S. 649;
John B. King Mfg. Co. vs. City Council of Augusta, 277 U. S. 267;
Standard Scale Co. v. Farrell, 249 U. S. 571;
Williams v. Bruffy, 96 U. S. 716;
Zucht vs. King, 260 U. S. 174;
Beinman vs. City of Little Rock, 237 U. S. 171;
Atlantic Coast Line, etc. vs. City of Goldsboro, 232 U. S. 548;
Bacon vs. Texas, 163 U. S. 207.

By an Act of Congress of January 31, 1928, c-14, Par. 1, 45 Statutes at Large, p. 54, the word "appeal" was substituted for "writ of error."

In the said cause there is drawn in question the validity of Sections 187, 188, 189, 190, 191, 193, 194, 196 and 208, Chapter 73 Rev. Stat. Ill. 1937, referred to as the Illinois Insurance Code, and the decision being in favor of their validity, the appellant contending that the said holding violated the above mentioned constitutional provisions of the Constitution of the United States, which in the interest of brevity are not here repeated.

IV

Appellant contends that said statutes as interpreted, construed and enforced by the Supreme Court of Illinois in affirming the decree of the Superior Court of Cook County, have deprived appellant of his constitutional rights secured and guaranteed to him by Sections 1 and 2 of Article IV, Sections 1 and 2 of the Fourteenth Amendment, and Article VI of the Constitution of the United States, and particularly by so interpreting, construing and enforcing them holding the said Statutes valid.

Wherefore, Petitioner prays for the allowance of an

appeal from the said Supreme Court of the State of Illinois to the Supreme Court of the United States, in order that the decision of the Supreme Court of Illinois may be examined, reviewed and reversed, and also prays that a transcript of the record, proceedings and papers in this case, duly authenticated by the Clerk of the Supreme Court of the State of Illinois, may be sent to the Supreme Court of the United States, as provided by law.

[fols. 186-188] Your petitioner further prays that an order be made fixing the amount of security which the petitioner, as appellant, shall give and the approval of such bond as required in this case, also that an order be duly entered recalling the mandate.

The errors upon which your petitioner claims to be entitled to an appeal are those above indicated, and more fully set out in the Assignment of Errors filed herewith.

A copy of the opinion as originally filed, together with the amendment thereto, is attached to the Jurisdictional Statement filed herewith.

J. L. London, 418 Olive Street, St. Louis, Mo.; Ford W. Thompson, 818 Olive Street, St. Louis, Mo.; Julius Polikoff, 111 West Washington, Chicago, Ill., Attorneys for Appellant.

Tannenbaum, Polikoff & Schmidt, Of Counsel.

[fol. 189] [File endorsement omitted.]

IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

ASSIGNMENTS OF ERROR—Filed February 26, 1946

Upon the filing of appellant's petition for an appeal to the Supreme Court of the United States, and filed therewith and hereby made a part thereof, in conformity with Rule 9 of the Supreme Court of the United States, appellant assigns the following errors committed by the Supreme Court of Illinois, the Court of last resort in Illinois, upon which he relies for a reversal:

I

That in and by its said decision the Supreme Court of Illinois, the Court of last resort in the State of Illinois, has

erred in that it has so interpreted, construed, applied and given effect to Sections 187, 188, 189, 190, 191, 193, 194, 196 and 208 of Chapter 73 of the Revised Statutes of Illinois 1937 (referred to in said opinion as Article XIII of the Illinois Insurance Code), in sustaining their validity, as to constitute said laws repugnant to and violative of appellant's constitutional rights, secured to him as a citizen of St. Louis, State of Missouri and of the United States by Article IV, Sections 1 and 2, Article VI, and the Fourteenth Amendment to the Constitution of the United States, sections 1 and 2 thereof, as hereinafter separately and specifically enumerated; which errors were called to the attention of said Court by Appellant in his original brief, his reply [fol. 190] brief, and his petition for a rehearing filed in said Court.

II

That in and by its decision upholding the validity of said sections of said Illinois laws and thereby denying full faith and credit, or any credit whatsoever, to appellant's Missouri judgment, the Supreme Court of Illinois, as justification for its decision, interpreted, construed, applied and gave such an effect to said Sections 187, 188 and 189 as to render said Sections repugnant to the said provisions of the United States Constitution and [redacted]uthorizing the court of the State of Illinois to [redacted]an injunctive order in the proceeding brought in the State of Illinois under said laws against Chicago Lloyds (an unincorporated association of individuals who were transacting an insurance business in the State of Illinois under an Illinois license, and also in Missouri under a Missouri license, as well as in other states), that was binding on appellant.

Said Section 189 provides that an injunction may be issued when deemed necessary to prevent interference with the proceedings or with the Director's possession or control or title, rights or interests, or to prevent interference with the conduct of the business by the Director, or that may be deemed necessary to prevent waste of assets, or the obtaining of preferences, judgments, attachments, or other like liens, or the making of any levy against such company or its property and assets while in the possession and control of the Director.

The Court held that the injunction so made and entered by said Illinois Court, pursuant to said Statute, was binding

upon the appellant herein, and entitled to be given extra-territorial effect and enforcement, and to restrain appellant from continuing to prosecute a tort action filed in the State of Missouri in the year 1934 (four years prior to said liquidation proceedings), in a Court of Missouri which had [fol. 191] general jurisdiction and jurisdiction of the subject matter and also personal service upon said "Chicago Lloyds", and which case was at issue and awaiting trial in Missouri at the date of the said injunctive order, notwithstanding appellant was not brought before said Illinois Court when said injunctive order was entered, and was not served with process in said proceeding; and had no notice whatever of said order, and against whom no citation for contempt of said order was ever applied for or issued by said Court, and no order entered therein finding him guilty of contempt of said order; and notwithstanding, in addition, that appellant's claim was not based upon any contractual relationship to said *un*incorporated association of individuals, Chicago Lloyds, whatsoever, but was based upon a tort, committed against him in the State of Missouri in 1932, for which he was there in said State of Missouri seeking redress.

Said Supreme Court of Illinois erroneously held that said injunction was violated by continuing to prosecute said tort action to judgment subsequent to the entry of such an injunctive order; and for that reason, that by so violating said injunctive order, and as a penalty therefor, the Courts of Illinois are not required to accept a properly authenticated copy of said Missouri judgment as proof of the liability and amount of appellant's claim against the assets of said Chicago Lloyds, and are not for that reason required to give full faith and credit to said judgment.

III

That the Supreme Court of Illinois erroneously denied full faith and credit, or any credit whatever, to appellant's said Missouri judgment for the further reason stated by it: that it so interpreted, construed and gave legal effect to said Section 191 of said Illinois law "vesting title in said Illinois Liquidator." and to said Section 196, authorizing the dissolution of a domestic insurance "corporation" created and existing under and by virtue of the laws of the [fol. 192] State of Illinois, as authorizing, in a liquidation

proceeding instituted under said Sections, the dissolution of an *un*incorporated association of individuals doing business in, and licensed by, the State of Illinois to transact their insurance business in the State of Illinois, even though they were likewise licensed and transacting their insurance business in other States, among them the State of Missouri.

Said Court gave effect to said Section 191 as transferring the title to all the assets of "Chicago Lloyds" wherever located; and by so construing and applying the "vesting of title to said assets in said statutory liquidator," said Supreme Court erroneously held that all actions (whether for tort or on contracts) pending in sister States, were by said "vesting of title," abated; and from and after such "vesting of title in said statutory Liquidator," the legal existence of said unincorporated association of individuals was dissolved and terminated; and that all judgments entered in sister States subsequent to said date of vesting of title, (February 9, 1938) were void, and were entitled to be completely disregarded, and denied any protection or faith and credit as provided by Article IV of the Constitution of the United States; or as provided by the Fourteenth Amendment to the Constitution; said Court erroneously deciding that such an interpretation and application of a law of the State of Illinois is valid, and is not repugnant to or violative of Article VI of the Constitution of the United States.

IV

That the Supreme Court of Illinois erred and violated Article IV of the United States Constitution requiring full faith and credit to be given to the said Missouri judgment, by improperly interpreting, construing and giving effect to Sections 194 and 208 of the said Illinois Insurance Code and by its interpretation held them valid and not repugnant to appellant's said constitutional rights.

[fol. 193] Said Section 194 provides that the rights and liabilities of the domestic company and of its creditors, except those holding contingent claims * * * shall, unless otherwise ordered by the Court be fixed as of the date of the entry of the order directing liquidation; and said Section 208 provides also that the Liquidator shall notify all persons who may have claims against said domestic company * * * and who have not filed proper proofs thereof, to present the same to him at the place

specified in such notice within such time as may be fixed by the order of the Court; and that the last day for the filing of such proofs of claims being thereby required to be specified in the notice; and the said Section 208 further provides that said notice shall be given in a manner determined by the Court; and clause 2 of said Section 208 expressely provides, that proofs of claim on good cause shown, may be filed subsequent to the day specified, but that no such claim shall share in the distribution of assets until all allowed claims, proofs of which have been filed before said date, have been paid in full.

The Record, page 2, shows that on the 9th day of February, 1938 the assets of these unincorporated individuals, were about $1,507,700.07, and their liabilities aggregate in excess of $1,203,512.17, leaving a surplus of $304,187.90. The Illinois law requires a surplus of not less than $500,000, Section 99 Illinois Insurance Code.

Said Court in construing the said mentioned sections 194 and 208 of the said Illinois Insurance Code as valid, erroneously decided that although appellant on the 21st day of September, 1938, filed with the said Liquidator within the time fixed by the Court (November 15, 1938) (Addl. Abs. pp. 1, 2) his verified claim, (stating therein that it was based upon a petition for damages accrued to him in October of 1932 in the State of Missouri, which he filed in the Circuit Court of the City of St. Louis, Missouri on August 24, 1934, and which was then pending, and attached thereto copy [fol. 194] of said petition, and further stated in said verified claim, that he would file a supplemental and amended claim when judgment has been obtained in said Missouri Court), that nevertheless, since appellant had not filed with said Liquidator his amended claim, to-wit, the *final judgment* rendered in said Missouri Court April 7, 1941, until August 2, 1941 (and therefore three years after November 15, 1938, the date fixed by said Court under said sections of the laws of the State of Illinois), for *that* further reason, said Supreme Court erroneously held that said final judgment was not entitled to full faith and credit, and that to permit it to be allowed as a claim and to participate in the distribution of the assets of said judgment debtor, would violate the provisions of said Illinois laws. Thereby, said Court not only applied an Illinois Statute that by such an interpretation it held was valid, but also held that it was not repugnant to, and would not and did not violate said Article VI of the

Constitution of the United States and the provisions of said Article IV, requiring that said judgment be given full faith and credit; and in addition, actually misinterpreted and misapplied said Illinois law itself.

Said law expressly provides, under clause 2 of said Section 208, that proofs of claim, on good cause shown, may be filed subsequent to the date specified, but that no such claim shall share in the distribution of assets until all allowed claims, proofs of which have been filed before said date, have been paid in full.

Thereby, even if said sections of said Illinois law, so held to be valid and not repugnant to nor violative of said constitutional rights secured to appellant under said Article IV, it has been thus so erroneously applied by said decision, as to be repugnant to and to violate the said Fourteenth Amendment,—in that, said Supreme Court has by its decision and interpretation of said law violated and disregarded appellant's constitutional rights secured to him by section 2 of Article IV: in that by such an interpretation and application sustaining the validity of the law of Illinois [fols. 195-196] as not repugnant to appellant's rights as a citizen of Missouri and of the United States, it has abridged his privileges and immunities as a citizen of Missouri, viz: (to have his claim recognized and allowed as provided by said clause 2 of said Section 208, "subject to all allowed claims, proofs of which had been filed before said filing date, November 15, 1938"). That in addition, said interpretation, application and effect given said law is repugnant to and violative of Section 1 of the Fourteenth Amendment to the Constitution, providing that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of property without due process of law, nor deny to any person within its jurisdiction, the equal protection of the law.

Further, this record discloses that no distribution of assets of said Chicago Lloyds had been made when said Missouri judgment was filed with said Liquidator on August 2, 1941; and that said Liquidator filed his Tenth Report on Claims June 10, 1942 (R. p. 9) and that claims were being tried and approved or disapproved, and the matter of whether or not all claims against said Chicago Lloyds that had been filed "on or before November 15, 1938"

could be paid in full, or only *pro rata* had not been determined, when said Liquidator recommended the disallowance of appellant's claim.

J. L. London, 418 Olive Street, St. Louis, Mo.; Ford W. Thompson, 818 Olive Street, St. Louis, Mo.; Julius Polikoff, 111 West Washington, Chicago, Ill., Attorneys for Appellant; Tannenbaum, Polikoff & Schmidt, Of Counsel.

[fol. 197] [File endorsement omitted]

IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL—Filed February 26, 1946

The petition of Charles B. Morris for an appeal in the above cause to the Supreme Court of the United States from the judgment of the Supreme Court of the State of Illinois, and the Assignment of Errors filed therewith, together with the Jurisdictional Statement required by Rule 12 of this Court, and the record of said cause, having been considered, it is

Ordered that an appeal be and is hereby allowed to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Illinois entered in this cause November 19, 1945, as prayed in said petition, and that the Clerk of the said Supreme Court of the State of Illinois shall within Forty days from this date, make and transmit to the Supreme Court of the United States, under his hand and seal of the Court, a true copy of the material parts of the record herein, which shall be designated by praecipe or a stipulation of the parties or their counsel herein.

It is further ordered that said Charles B. Morris, Appellant, shall give good and sufficient security in the sum of 250.00 Dollars, that said appellant shall prosecute said appeal to effect, and if said appellant fails to make his plea good, he shall answer all damages and costs.

[fols. 198-199] Wiley Rutledge, Justice of the Supreme Court of the United States.

February 14th, 1946.

[fols. 200-204] Bond on appeal for $250.00 approved and filed Feb. 26, 1946, omitted in printing.

Approved this 18th day of February, 1946.

Wiley Rutledge, Associate Justice.

[fols. 205-210] Citation in usual form showing service on Ferre C. Watkins, et al., filed Feb. 26, 1946, omitted in printing.

[fol. 211] [File endorsement omitted]

IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

PRAECIPE—Filed February 26, 1946

The Clerk of the Supreme Court of Illinois is requested to prepare for transcript to the Supreme Court of the United States his record, as follows:

1. Abstract of the Record;

2. Additional Abstract of the Record;

3. Pages 6 to 11 of Appellee's Brief filed in the Supreme Court of Illinois;

4. Pages 25, 26, 28, 41 and 42 of Appellant's Reply Brief filed in the Supreme Court of Illinois;

5. Assignments of Error in the Supreme Court of Illinois, pages 9 to 11 inclusive, of Appellant's original brief;

6. Petition for rehearing filed by Appellant;

7. Order of November 19, 1945, denying petition for rehearing;

8. Original opinion of the Supreme Court of Illinois affirming the decree of the Superior Court of Cook County, Illinois and the amendment to said opinion;

9. Judgment of the Supreme Court of Illinois on affirmance of the decree of the Superior Court of Cook County, Illinois;

[fol. 212] 10. Order of the Supreme Court of Illinois denying appeal to the United States Supreme Court;

11. Petition for appeal to the Supreme Court of United States upon which the order was entered allowing said appeal;

12. Jurisdictional statement filed therewith;

13. Assignments of error filed with the same;

14. Order of the Supreme Court of the United States granting appeal to the United States Supreme Court, with Clerk's Certificate;

15. Appeal Bond and approval thereof;

16. Citation to appellee;

17. Proof of service of citation;

18. Notice dated February 18, 1946 in accordance with Rule 12 of the Rules of the Supreme Court of the United States with proof of service thereof;

19. Original statement directing attention to the provisions of paragraph 3 of Rule 12 of the Rules of the United States Supreme Court and affidavit attached to the same;

20. This praecipe for record and proof of service thereof.

J. L. London, 418 Olive Street, St. Louis, Missouri; Ford W. Thompson, 818 Olive Street, St. Louis, Missouri; Julius Polikoff, 111 West Washington, Chicago, Illinois, Attorneys for Appellant.

Tannenbaum & Polikoff, Of Counsel.

[fols. 213-215] Receipt is acknowledged of copy of the foregoing praecipe for record this 25th day of February, A. D. 1946.

Ferre C. Watkins.

Glenn, Real & Browning, attorneys for appellee N. P. Parkinson, Director of Insurance of the State of Illinois.

[fol. 216] [File endorsement omitted]

IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

COUNTER-PRAECIPE—Filed March 6, 1946

The Clerk of the Supreme Court of Illinois is requested to include in the transcript of record to the Supreme Court of the United States in the above entitled cause, in addition to the documents requested in the Praecipe filed herein by counsel for the Appellant, Charles B. Morris, the following:

1. Appellee's Statement Disclosing Matter or Ground Making Against the Jurisdiction of the Supreme Court of

the United States as Asserted by Appellant, Filed in Accordance With the Provisions of Paragraph 3, Rule 12, of the Supreme Court of the United States, and Motion to Dismiss Appeal or Affirm Judgment of Supreme Court of Illinois.

Ferre C. Watkins, General Counsel, Department of Insurance of the State of Illinois, of Chicago, Illinois; Otis F. Glenn; Raymond G. Real; Otto W. Barnes, All of Chicago, Illinois, Attorneys for Appellee, N. P. Parkinson, Director of Insurance of the State of Illinois, as Liquidator of Chicago Lloyds.

[fols. 217-218] Copy of the foregoing Counter-Praecipe for additional record received this 4th day of March, A. D. 1946.

J. L. London, 418 Olive Street, St. Louis, Mo.; Ford W. Thompson, 818 Olive Street, St. Louis, Mo.; Julius A. Polikoff, 111 West Washington St., Chicago, Ill., Attorneys for Appellant.

[fol. 219] [File endorsement omitted]

IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

STIPULATION—Filed March 6, 1946

Whereas, the opinion in the above entitled cause was handed down under the style of "The People ex rel. Paul F. Jones, Director of Insurance, Appellee, vs. Chicago Lloyds, et al, Appellee, Charles B. Morris, Appellant;

Whereas, the appeal was likewise entitled as set out in the opinion of the Supreme Court of Illinois;

Whereas, N. P. Parkinson has been the Director of Insurance from April 24, 1945 and was the Acting Director of Insurance of the State of Illinois at the time of the entry of the decree of the Superior Court of Cook County, Illinois, from which the appeal to the Supreme Court of Illinois was taken herein and was so designated in said decree, the said Paul F. Jones having resigned prior to the entry of said decree, but no change was made in the title of said

cause in the Superior Court of Cook County, Illinois, and said N. P. Parkinson is now such Director of Insurance;

Whereas, said N. P. Parkinson filed his appearance in the appeal in the Supreme Court of Illinois by his attorneys and filed therein an additional abstract of record and his briefs as such appellee and Acting Director of Insurance, and subsequent to April 24, 1945 and after the original [fol. 220] opinion of the Supreme Court of Illinois in the appeal was rendered, filed his petition for rehearing as Director of Insurance of the State of Illinois; and

Whereas, the citation issued by the United States Supreme Court in granting the appeal in the above styled case from the Supreme Court of Illinois to the Supreme Court of the United States was issued to Paul F. Jones, Director of Insurance of the State of Illinois, instead of to N. P. Parkinson, as his successor,

It is hereby stipulated by and between the parties, through their respective counsel that the said citation may be considered as if issued to N. P. Parkinson, Director of Insurance of the State of Illinois.

It is further stipulated that in making up the record, the Clerk of the Supreme Court of Illinois substitute the name of N. P. Parkinson as Director of Insurance in place and stead of Paul F. Jones, Director of Insurance of the State of Illinois, and that the case be henceforth styled "The People ex rel. N. P. Parkinson, Director of Insurance of the State of Illinois," etc.

It is further stipulated that this stipulation be attached to the citation heretofore issued by the United States Supreme Court, and may be included in the transcript of the record to be filed in the Supreme Court of Illinois.

J. L. London, Ford W. Thompson, Julius A. Polikoff, Attorneys for Appellant. Ferre C. Watkins, Glenn, Real & Browning, Attorneys for N. P. Parkinson, Director of Insurance of the State of Illinois, Appellee.

[fol. 221] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 222] IN THE SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY AND DESIGNATION OF RECORD FOR PRINTING—Filed March 18, 1946

Pursuant to Rule 13, Paragraph 9, of the Revised Rules of this Court, appellant states that he intends to rely upon all the points in his Assignments of Error.

Appellant deems the entire record as filed in the above entitled cause necessary for consideration of the points relied upon, including the Petition for Rehearing, but only the following pages thereof, Pages 1, 2 and the first paragraph of page 3; on page 8 the first paragraph under "Third Class"; on page 14 the first paragraph under "Fourth Class"; the bottom of page 29 under point II, and pages 30, 31, 32 and 33. The remaining pages are deemed unnecessary.

J. L. London, 418 Olive Street, St. Louis, Mo.; Ford W. Thompson, 818 Olive Street, St. Louis, Mo.; Julius Polikoff, 111 West Washington, Chicago, Ill., Attorneys for Appellant. Tannenbaum & Polikoff, of Counsel.

Copy of the above received this 14th day of March, 1946. Ferre C. Watkins, Otis F. Genn, Raymond G. Real & Otto W. Barnes, Attorney for Appellee.

[fol. 223] [File endorsement omitted]

[fol. 224] SUPREME COURT OF THE UNITED STATES

ORDER POSTPONING FURTHER CONSIDERATION OF QUESTION OF JURISDICTION—April 29, 1946

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of jurisdiction in this case is postponed until the hearing on the merits.

Mr. Justice Jackson took no part in the consideration or decision of this question.

[Endorsed on cover:] File No. 50,664. Illinois Supreme Court, Term No. 62. Charles B. Morris, Appellant, vs. Paul F. Jones, Director of Insurance of the State of Illinois. Filed March 16, 1946. Term No. 62 O. T. 1946.